
IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

PATRICK CLARK, BENJAMIN C. KINGS-
BURY, JAMES P. HARVEY and A. G.
KERNS, Administrator of the Estate of
JAMES CLARK, Deceased,

Appellants,

vs.

THE BUFFALO HUMP MINING COM-
PANY (a Corporation), and THE EMPIRE
STATE-IDAHO MINING & DEVELOP-
ING COMPANY (a Corporation),

Appellees.

VOL. III

(Pages 817 to 1117, inclusive)

Upon Appeal from the United States Circuit Court
for the District of Idaho, Northern Division.

(Testimony of Charles K. Cartwright.)

Q. You found it longer than that on the backs?

A. On the backs, yes, sir.

Q. Was there any evidence of the ore playing out in the faces of those stopes, or the backs?

A. No, sir; there is ore still there.

Mr. HEYBURN.—I now offer in evidence these three samples, which will be put in the sacks we have and marked 1, 2, 3, and 4, offered this morning. Sample No. 1 being from the first strike of ore intersected in the crosscut; at the intersection of the intermediate drift. The No. 2 specimen being from that streak on to the point as shown upon the map, in the trench. No. 3 being a piece representing the width, and taken from the streak near the face of the crosscut which was followed on the east drift. No. 4 being a large sample in a box taken from the southwest corner of the four corners representing the intersection of the crosscut and the intermediate drift, all on the 1,200 foot level.

(Said four samples above offered are marked in the order of their offer Defendants' Exhibits Nos. 15, 16, 17, and 18.)

Whereupon a recess was taken until 2 o'clock P. M., this 30th day of January, 1902.

Cross-Examination.

(By Mr. STOLL.)

Q. When did you go to work for this company, Mr. Cartwright? A. On the 18th of July, 1901.

Q. What was the condition of the stopes in the twelve hundred, at the time you went to work there?

(Testimony of Charles K. Cartwright.)

A. On the twelve hundred?

Q. Yes. A. In the Disputed territory?

Q. Yes.

A. Worked out as far as they had been worked.

Q. What was the condition of the thirteen hundred stopes underneath? A. Partially worked out.

Q. On which end were they worked out most?

A. Are you talking about the disputed territory?

Q. Why certainly, I am talking about the disputed territory.

A. Well, on the thirteen hundred stopes, they were partially worked out.

Q. Which end of them were worked out most?

A. Well, the ground that is in the—

Q. You had two stopes there, you called one No. 1 and the other No. 2? A. Yes, sir.

Q. Which was worked out the farthest?

A. The No. 2 is the one in controversy.

Q. What part of the No. 3 was worked out? The No. 2 stope terminates at the end?

A. Of the Ella line; that was worked out.

Q. You say the No. 2 stope terminates at the Ella line? A. About that.

Q. It terminates at the end of that intermediate drift, doesn't it? A. Yes, sir.

Q. That is not the end of the Ella line?

A. It is about there, I said.

Q. Just come here, please, (looking at map). You call the No. 1 stope the main Poorman stope, don't you?

(Testimony of Charles K. Cartwright.)

A. Yes.

Q. The No. 2 stope begins at this fault, doesn't it, and runs to the end of the intermediate drift?

A. Yes, sir.

Q. And the No. 3 stope begins there and continues through? A. Yes, sir.

Q. Now, what I ask you is this: To what extent was the No. 2 stope exhausted on the thirteen hundred when you went to work there?

A. Well, it was about half out. The lower end there nearest the fourteen was out.

Q. The twelve was all out, was it?

A. Yes, sir.

Q. What is the width of those stopes on twelve; that No. 2 stope? I am speaking of the voids.

A. Average between five and six feet.

Q. What do they average on the thirteen hundred?

A. About the same.

Q. Now, to what extent was the No. 3 shoot exhausted on the thirteen hundred when you went there?

A. I don't know just how much was worked out in there.

Q. Was there as much of the ore extracted from the thirteen hundred on the No. 3 shoot as there was on the No. 2 shoot?

A. The ore on the thirteen hundred No. 2 shoot, that body of ore or shoot of ore we considered about two hundred feet high. All the ore taken out of the No. 2 shoot, it was up even with the twelve hundred foot level, but

(Testimony of Charles K. Cartwright.)

we call it the thirteen hundred because the ore is dropped down to the thirteen hundred foot level and taken out that way, and we speak of it as the thirteen hundred No. 2, although it is above the level of the twelve hundred, and there is very little of that ground in the ground in controversy. But the No. 3 was about half worked out.

Q. How much was the No. 2 shoot worked out?

A. It was about half worked out, about two hundred feet high. It was worked up on a level with the twelve hundred.

Q. One had been worked just about as much as the other when you went to work?

A. No, sir, one had been to the twelve hundred foot level.

Q. Which one? A. The No. 2 shoot.

Q. That is this shoot in the intermediate drift here at this end. The No. 2 shoot beginning at the Poorman line at the point where it intersects what is marked on Plaintiffs' Exhibit No. 2 as intermediate drift, running thence easterly and a distance therefrom westerly you say was practically exhausted from the thirteen to the twelve when you went to work there?

A. There has been no work done from the thirteen to the twelve on the thirteen hundred No. 2 shoot since I have been there, below the twelve hundred.

Q. What was its condition when you went to work there? How much ore was in there; how much had been extracted?

(Testimony of Charles K. Cartwright.)

A. There was none under the twelve hundred level in the thirteen hundred No. 2 when I went to work there.

Q. And there is none there now?

A. If there was not any there then, I don't suppose there is any there now.

Q. Did you work on that same shoot on the eleven, the No. 2 shoot? A. Yes.

Q. What is the width of the voids there?

A. Probably averaged five feet.

Q. Who was it directed you to go and make this examination and dig those trenches on the twelve hundred crosscut of which you testified this morning?

Mr. HEYBURN.—When do you mean? He has been there two or three times.

Q. Concerning which you testified this morning. Who directed you to do that? A. Mr. Miller.

Q. Did he go with you?

A. Not while I was digging, no, sir.

Q. What is the width of the opening there, of the crosscut where you made that trench?

A. Of the intermediate crosscut?

Q. Where did you make that trench?

A. In the intermediate crosscut.

Q. In the intermediate crosscut, what was the width of the crosscut at that time?

A. In the crosscut of the intermediate drift, we made a trench about two feet wide.

Q. What is the width of the opening at the point?

(Testimony of Charles K. Cartwright.)

A. Two feet wide.

Q. You don't understand my question evidently. What is the width of the crosscut or the drift, the opening?

A. The width of the crosscut is about eight feet.

Q. What part of the crosscut did you dig this trench in?

A. I dug the trench in the center of the crosscut.

Q. And what was the width of your trench?

A. About two feet.

Q. Did you dig any other trenches? A. Yes.

Q. Where were they?

A. One west of the crosscut and two east of it in the intermediate drift.

Q. Whereabouts; that is, in the drift proper?

A. In the intermediate drift.

Q. How far from the other trench that you dug?

A. About four feet, about four feet apart.

Q. You also dug a trench on the eight hundred since you were last upon the witness stand? A. Yes, sir.

Q. Whereabouts on the eight hundred?

A. Ten feet either side of the ones we dug there before.

Q. When did you do that? Before you made the raise or since?

Mr. HEYBURN.—Which raise?

Mr. STOLL.—There is only one raise to the eight hundred that I know of.

(Testimony of Charles K. Cartwright.)

A. Well, we could not get into the eight hundred before we made that raise there.

Q. When did you break into the eight hundred with that raise? A. The exact date, I don't know.

Q. Did you have charge of the work?

A. Yes, sir.

Q. Can't you give us the month?

A. Probably in November.

Q. What part of November?

A. Probably about the middle of it, between the first and the middle of November. The date I don't know.

Q. And this raise was made to the eight hundred from this No. 2 shoot was it not? A. Yes, sir.

Q. This same shoot in which you say you found these poor values of which you testified this morning; that is the same one, isn't it?

A. The raise was started I imagine from the 1,100 level.

Q. But it was from the same ore shoot, wasn't it?

A. On the same ore shoot.

Q. Can you tell us what time you dug these trenches in the eight hundred, of which you testified this morning?

A. The exact date?

Q. Oh, I don't care for the exact date. Approximate it, if you can.

A. Well, we dug them after we broke through.

Mr. HEYBURN.—Which was since the last hearing.

Q. You broke through, I think, between the first and

(Testimony of Charles K. Cartwright.)

middle of November. Is that as near as you can come to it?

A. We dug these last four trenches since the first hearing on the 5th or 6th of this month.

Q. When was the hearing before?

A. About the 6th or 7th of January.

Q. Was it the next day? A. No, sir.

Q. The day after that? A. No, sir.

Q. A week after that? A. It was later than that.

Q. Ten days? A. Possibly.

Q. What are the probabilities?

A. Probably ten days.

Q. Do you say it was ten days? A. No, I don't.

Q. What do you say then? Can't you give us some idea? A. It might probably be ten days.

Q. Is that your best belief and judgment and remembrance?

A. Somewhere along there, between that and thirty days.

Q. That would put it about the 16th of January then, wouldn't it?

A. Well, probably it was on the 16th of January.

Q. You are the foreman of that mine, are you not?

A. Yes, sir.

Q. Did you keep no record of your business up there?

A. Yes, sir.

Q. Are you unable to give us any better or more accurate account of when you did that work than when you stated?

(Testimony of Charles K. Cartwright.)

A. I could not give it to you now; I haven't it here.

Q. Where have you got it? A. At Burke.

Q. Did you dig this second trench before or after Mr. Ralston and Mr. Harvey went up there?

A. Before that.

Q. Did you go with them in the eight hundred when they were up there? A. No, sir.

Q. Did you show them where you had dug this trench? A. No, sir.

Q. Or what you found there? A. No, sir.

Q. Why didn't you? A. I was not asked to.

Q. You thought, in view of the fact that they did not ask you, you would not tell them? A. No, sir.

Q. Was the trench open so they could examine it?

A. No, sir.

Q. Did you cover it up again? A. Yes, sir.

Q. What did you do that for? A. We filled it up.

Q. What did you do that for? Were you afraid somebody would see it? A. No, sir.

Q. How deep did you dig that trench?

A. Down to the solid, about a foot deep or fifteen inches.

Q. Did you dig through the solid?

A. To the solid.

Q. Was there a foot of loose matter there that you had to dig through? A. Nearly that.

Q. Was it pretty hard to dig through?

A. No, sir.

(Testimony of Charles K. Cartwright.)

Q. Are you using the eight hundred at the present time? A. No, sir.

Q. You are not running cars through it?

A. No, sir.

Q. How long were those trenches that you dug?

A. The width of the drift, about five feet.

Q. And you dug how many?

A. There have been six dug there.

Q. On the eight hundred, and all about the same width and depth?

A. They are all the width of the drift.

Q. And you covered them all up?

A. We filled them in, yes.

Q. What did you fill them up for?

A. Well, we filled them up because we were through with them.

Q. Did you have any other purpose than that?

A. None that I know of.

Q. No other purpose. Just filled them up because you were through with them? A. Yes, sir.

Q. You have a lock and key on the eight hundred now, haven't you? A. Yes, sir.

Q. When did you put that on?

A. That has been on probably twenty days.

Q. Have you any reason or did you have any reason or can you state any reason now why you did not advise Ralston and Harvey of the fact that you had dug those trenches and filled them up?

(Testimony of Charles K. Cartwright.)

A. I did not suppose that I was up there finding information for these people. They were supposed to find it for themselves.

Q. You were finding it for yourselves? A. Yes.

Q. And then covered it up so that nobody else could find it?

A. They had the privilege of going to the bottom if they wanted to.

Q. Who advised you to cover up those trenches?

A. I had my men cover them up.

Q. Who advised you to have your men do it? Was it Mr. Miller or was that a brilliant idea of your own?

A. That was Mr. Miller's.

Q. Mr. Miller is the assistant manager, isn't he?

A. Yes, sir.

Q. How much ore did you find in the raise to the eight hundred when you broke into the eight hundred?

A. It varied in width from three feet to six inches.

Q. Very good quality of ore was it? A. Yes.

Q. And continued all the way up?

Q. There was ore all the way up.

Q. You say you never found any clean ore within the limits of the Ella ground? A. No, I did not say that.

Q. Didn't you say that? A. No.

Q. Where did you get the piece of ore you sent to the Buffalo Exposition? A. I never sent any there.

Q. You say you never sent any there?

A. No, sir.

(Testimony of Charles K. Cartwright.)

Q. I didn't say you did.

A. Well, you asked me where I got it.

Q. I am speaking of the mining company. Where did the company get it?

A. I could not tell you, sir.

Q. Did you oversee the piece that they sent?

A. No, sir.

Q. You are the foreman of the mine? A. Yes.

Q. Do you know of their sending a large specimen of clena ore to the Buffalo Exposition?

A. From the Tiger mine?

Q. From the Burke Group of mines.

A. No, sir; I don't know anything about it, never heard of it.

Redirect Examination.

Q. When you speak of the width of the vein or drift at the intermediate crosscut or crosscut and intermediate drift and at various places you spoke of it being so many feet wide, eight feet and five feet wide, do you mean to be understood that the ore was that wide, or the void?

A. The void. He asked me the width of the void or crosscut.

(Witness excused.)

JOHN STONE, being called and sworn as a witness on the part of defendants, testified as follows:

Direct Examination.

(By Mr. HEYBURN.)

Q. What is your position at the Tiger Mine?

A. Miner and shift boss.

Q. How long have you been a shift boss there?

A. Since 1899, the 20th day of September. I started to work on the 10th day of September.

Q. You commenced to work in the mine on the 10th of September, 1899? A. Yes.

Q. Where did you commence work?

A. On the sixteen hundred at the station.

Q. Did you ever work on the twelve hundred?

A. No, I never worked on the twelve hundred.

Q. Did you ever work in the south crosscut from the twelve hundred? A. I never worked in the south.

Q. Were you ever shift boss when the work was being done there? A. Yes.

Q. When did you commence work as shift boss on the twelve hundred?

A. Along about the 20th of September.

Q. How far in was that south crosscut at that time?

A. Fifteen or twenty feet, probably.

Q. Then you worked as shift boss on that work continuously from that time on? A. Yes, sir.

Q. Were you there when they struck the first ore in that crosscut? A. Yes.

Q. How much ore did they strike?

(Testimony of John Stone.)

A. Six or eight inches.

Q. What did they go through after they struck the ore?
A. Went through a horse of waste.

Q. Did they strike any more ore? A. Yes.

Q. About how much?

A. About six inches, again.

Q. Was there any other ore except those two six-inch streaks struck in that crosscut, at any time?

A. No.

Q. You are shift boss, or were, at the time of the running of the drift on the crosscut, were you?

A. Yes, sir.

Q. Did that ore, at any time, become wider than it was at the point you struck it? A. No, sir.

Q. Were you shift boss during the time that the stope was being raised from that intermediate drift?

A. Yes.

Q. State how wide the ore was in that stope.

A. All the way from six inches to a foot.

Q. Was it, at any time, more than a foot?

A. No, sir.

Q. You were shift boss in the running of the east drift from that crosscut, were you not? A. Yes.

Q. State if the six inches of ore that you found in the crosscut continued in running that drift.

A. No, sir.

Q. How far did it continue?

A. About eight or nine feet.

Q. Then, what condition existed?

(Testimony of John Stone.)

A. Pinched out to almost nothing.

Q. What do you mean by nothing?

A. Nothing but a layer of talc and just the wall to go by.

Q. How far did they continue in the east drift?

A. About eighty or ninety feet.

Q. Then, what did you find?

A. I found ore again.

Q. How wide was the ore that you found after that again, in the east drift?

A. About two feet, on the average, probably might be a little more or a little less in places.

Q. What grade of ore was that? Was it clean ore to ship without concentrating? A. No, sir.

Q. About how many tons into one was it?

A. Probably ten to one, or something like that.

Q. Is that a fair statement as to the value of the ore in the east drift? Ten into one? A. Yes.

Q. It was milled in the concentrate, was it?

A. All of it milled.

Q. Was there ever any orders given there that only men who could not speak the English language should be employed in connection with any of that work?

A. No, sir.

Q. How long were you shift boss, or were you shift boss to the time that the work quit on the east drift?

A. Yes, sir.

Q. You were shift boss from the time the crosscut

(Testimony of John Stone.)

was in about twelve or fourteen feet until the work was finished on the twelve hundred foot level?

A. Yes, sir.

Q. Was there ever any time when anyone had any instructions, or without instructions, employed men because they could not speak the English language, or who could not speak it? A. No, sir.

Q. And the men that worked on that work, could they speak the English language?

A. Yes, sir; they can speak English better than I could.

Q. Did you see that piece of rock in the box?

A. Yes, sir.

Q. You and Mr. Cartwright had custody of it?

A. Yes, sir.

Q. Where was that taken from?

A. From the southwest corner, opposite the intermediate drift.

Cross-Examination.

(By Mr. STOLL.)

Q. You went to work there as shift boss in 1899?

A. Yes, sir.

Q. Have you ben working there ever since?

A. Yes, sir.

Q. As shift boss?

A. Pretty nearly all the time.

Q. Are you the shift boss now? A. Yes, sir.

Q. What wages do you get?

A. Five dollars a day.

(Testimony of John Stone.)

Q. Have you a family? A. Yes.

Q. Where were you born? A. Sweden.

Q. How long have you been in this country?

A. Since 1882.

Q. How many Swedes had you working in the drift when you were there in September?

A. I think one worked there for awhile.

Q. Only one? A. Only one.

Q. You say you never heard any instructions being given to employ only men that could not speak the English language? A. Yes.

Q. Who hired the men there? A. Tom Jay.

Q. It is not very likely they would tell you who he was going to hire, is it?

Mr. HEYBURN.—That is objected to as being argumentative.

Q. Was Jay in the habit of telling you whom he was and was not going to hire, and whom he had authority to hire? (This question withdrawn.)

Q. You say you found six inches of ore in a crosscut the first ore you struck? A. Yes, sir.

Q. And then you went through a big horse and struck about a foot?

A. No, between six and eight inches, again.

Q. How big was the horse you went through?

A. About seventeen feet.

Q. Then you got six inches more? A. Yes.

Q. Then what? More horse?

A. No; we did not get no further.

(Testimony of John Stone.)

Q. Then, you only got two six-inch seams of ore in the crosscut? A. Yes.

Q. That would not pay to work, would it? You are enough of a miner to know it would not pay to work six inches of ore?

A. Well, it is none of my business whether it pays or not.

Q. I didn't ask you whose business it was. I asked you if, in your opinion, it would pay to work six inches of ore? A. Why, yes.

Q. It must be pretty good quality of ore, if it pays to work six inches, must it not?

Mr. HEYBURN.—He did not say it would pay to work this six inches of ore.

Mr. STOLL.—Mr. Heyburn, let the witness answer.

Q. Did it pay to work that six inches of ore?

A. I don't know.

Q. What is your opinion as to whether it would pay or would not? A. I suppose it would pay.

Q. They did work it, didn't they?

A. They worked part of it.

Q. They raised that stope above?

A. Yes, sir.

Q. And they drove on it, also, didn't they?

A. Yes.

(Excused.)

CHARLES SWEENEY, being recalled on part of defendants, and sworn, testified as follows:

Direct Examination.

(By Mr. HEYBURN.)

Q. Mr. Sweeney, Albert Allen has testified in this case that he had a conversation with you in reference to the discovery of new ore bodies in the Poorman mine at Burke; and with reference to the fact that you knew of the existence of those ore bodies prior to the purchase of the Poorman mine. Will you state whether or not you had any conversation with Mr. Allen in regard to this matter?

A. No, sir, I never had any conversation with him about it, at all, at any time.

Q. Mr. Allen states that this conversation occurred at your office in the city of Spokane in the spring of 1900. Did you have any conversation with regard to these matters with Mr. Allen at your office at that time?

A. No, sir.

Q. He fixes the time by saying that it was a short time previous to the argument of the case of Rice against Rigley in the Supreme Court of Idaho, and was part of a conversation with reference to the Winslow and Yankee Boy mines, in which he had an interest, in the Buffalo Hump country, and that he was trying to sell you this interest, and that in some way the conversation drifted around and you told him you had an option on the Tiger-Poorman mines for the purchase of them. State the facts in regard to that statement. Did you have any option?

(Testimony of Charles Sweeny.)

A. No, sir. Mr. Allen had spoken to me once or twice about the Winslow, and that other property there; but at no time did I ever have any conversation with him about the Tiger-Poorman.

Q. Did he have any conversation with you?

A. No, sir.

Q. Now, you may state anything with reference to his statement, wherein he says that during the conversation he asked you some question about the Poorman mine, that he had heard that the mine had been worked out pretty well, and that it was getting pretty expensive to pump. That he asked you some questions about it, and in answer to those questions you told him you had obtained an option on the Tiger-Poorman mine, with the privilege of going down in the mine with a diamond drill and boring some holes in the mine. What are the facts about that?

A. Well, we never had any option on the Tiger-Poorman mine. The purchase of the Tiger-Poorman mine, I don't think, took over fifteen minutes—the actual purchase of it. We had no option on it, and had never been to the mine before we bought it; that is, for several years prior.

Q. That is, you had not?

A. No, I had not, nor any of my men.

Q. That is, you mean the people you were associated with?

A. I mean the men employed by me. I met Mac-

(Testimony of Charles Sweeny.)

Donald on the car one day, and he spoke about the Poor-man mine.

Q. (Cross.) Which MacDonald was this?

A. Joe MacDonald. He said he had an option on it, and told me about it, told me the facts about the mine, etc., and the price; that his option was about thirty-five cents, I think, if I am not mistaken. However, I didn't do anything with it, and we thought over the matter awhile, and finally I sent over for Mr. Culbertson. Mr. Culbertson came into the office, and I asked him what they would take for their stock, 600,000 shares. He told me twenty-five cents a share, I think. That was the price he and the old man had agreed upon. I told him to go and get the 600,000 shares and bring it over, and I will give him a check for it.

Q. Did he do it?

A. Yes, sir. Bought and paid for it, and that is all there ever was to it.

Q. Then you never had any option on it, at any time?

A. Never had an option on it for a minute, never sent Mr. Miller to see it. Mr. Miller did not go there until after we bought it. We never had any access to the mine before we bought it, and had never been in it for several years—I had never, for several years prior to the purchase.

Q. He says here that you told him that the reason you wanted it was because Clayton Miller had made an examination of the Poorman mine, and that there was a fault or break in the vein, and that this fault showed

(Testimony of Charles Sweeny.)

on several levels of the workings. Did you know anything about those things?

A. Mr. Miller never made any examination of the mine; never made any statement about it, until after the purchase, and then he went with me and John Presley and Frank Culbertson, and we looked the mine over after we bought it.

Q. He says you had a sketch of the thing and showed it to him, but claims to have lost the sketch. Is there any truth in that statement?

A. No, sir. That would be a pretty close business connection of mine that I would draw a sketch for and show maps, or any description, and I never heard that Mr. Allen was connected with us in any way.

Q. You have read the statement Mr. Allen made on the witness-stand, have you?

A. No. I understand that he states there that I told him about the 1,800 foot level. The 1,800 foot level is yet to be opened in the Tiger. According to his statement, it was opened two years ago.

Q. He says you told him after you got an option to purchase the mine you got the privilege--or got it at the time--to run diamond drill holes in there, and that they would furnish as many men as you needed to aid you in doing the work?

A. There is absolutely no truth in that, and we never ran any diamond drill holes until after we bought it, quite a while.

(Testimony of Charles Sweeny.)

Q. Did you have any in mind, or contemplate running diamond drill holes at the time you bought it?

A. Well, I rather think I did. I had been doing diamond drill work for a good many years in the Coeur d'Alenes.

Q. But you didn't tell him anything about it?

A. Well, I guess not. I was not in the habit of talking to Allen, that I ever knew of. I never had any business with him in any way.

Q. He uses the expression that you said that when you were buying the Poorman mine you were not buying "a pig in a poke, but buying practically a certainty." Is there any truth in that statement? A. No, sir.

Q. Mr. Sweeny, Mr. Patrick Clark testifies in regard to the deal which was made which resulted in the purchase by the Buffalo Hump Mining Company of the Ella and Missing Link claims, that he made the sale through you; that you came to his office on the 13th of October, 1899, and stated that you wanted to buy his interest in some claims lying around the Ella that your company already owned in. What have you to say about that?

A. The first time I spoke to Mr. Clark about that property was on the street.

Q. What street, and what city?

A. Riverside avenue, about in front of the Exchange National Bank, about the time we were taking the cars to go home, both of us. It was somewhere between the first and fourth or fifth of August—I mean, of October. And I told him that I intended to buy all the property

(Testimony of Charles Sweeny.)

through there on both sides. He had some property up there, and if he wanted to sell it, to let me know what they wanted for it, and if we could agree on the price, I would buy it. Mr. Clark said then, he would see about it. That is about all the conversation there was to it. Some time after—it might have been the 13th of October, or it might have been before, but it was about that time—Mr. Clark came into the office, into our office in the Wolverton Building—Clark and Sweeny's office. He sat in the outside office for some little while, as I was very busy in my office, and the first I saw him was when I came out and Mr. Clark was sitting there. Mr. Lew Clark was also there, and Mr. Patrick Clark came into my office, and Mr. Lew Clark, also. And he said that they had agreed upon a price for the property, for their interest in the Ella and Missing Link. He said they had also the Sheridan up there and would like to close the whole thing up. I asked him what he wanted for it. He said they would take four thousand dollars for the four-fifths of it, and he wanted one thousand dollars for his interest in the Ella and Sheridan, and I told him he could bring me the deeds and I would pay him the money. That is all there was to it. I never had any further conversation with him.

Q. Was anything said between you, by either of you, as to the value of the mine, or whether anything had been discovered in it?

A. No, sir, not a word. Mr. Clark had worked the property a long time, and I think he thought he knew

(Testimony of Charles Sweeny.)

more about it than I did. Never asked me a word about it, and I never volunteered any information.

Q. Do you know anything about any arrangement existing between Mr. Clark and any of the plaintiffs and Mr. Culbertson, with reference to the terms upon which Mr. Culbertson acquired the one-fifth interest in the Ella and Missing Link claims? A. No, sir, I do not.

Q. Did you ever know anything about it?

A. No, sir; I never heard anything about it until after this suit started.

Q. Did you ever know or hear anything, prior to the purchase of the interest from Patrick Clark in these claims in relation to any agreement existing between the plaintiffs, or any of them, and Mr. Culbertson, with reference to Culbertson looking after the interests of the plaintiffs in the Ella and Missing Link claims?

A. No, sir, I never heard of it.

Q. Did you ever know anything of the relations that existed between Culbertson and the plaintiffs, or any of them, with regard to this property?

A. Never heard anything about it, at all, until after this suit was started.

Q. Mr. Clark has testified you made the statement that you desired to purchase properties around there in which your company already owned. Did you make any such statement to Mr. Clark at any time?

A. I am sure I did not.

Q. He then says that he asked you what interests you referred to, and that you named the Sheridan and

(Tesimony of Charles Sweeny.)

Ella and Missing Link. That he asked you how you owned in the Ella, and you said you had bought Mr. Culbertson's interest in the Ella and Missing Link. Is there any truth in that?

A. No, sir, not a word of truth in that. I had not bought Mr. Culbertson's interest.

Q. Did you have any interest in the Ella or Missing Link, directly or indirectly, at the time you bought the same four-fifths of Mr. Clark? A. No, sir.

Q. And he says he told you that you could not get his interest for \$500; that you told him you had paid Culbertson \$500 for his interest. Did you ever make that statement? A. No, sir.

Q. He then says he told you you could not get his interest for that; that you talked the matter over, and he asked you why you wanted it, and you said you were forming a corporation and did not want any side partners in there, and that you wanted to get a fraction of ground lying between the claim that you owned and the O'Neil. Is that a fact?

A. No. We never formed any corporation, nor was there any contemplation of it. The property went directly to the Buffalo Hump Company, which was in existence and doing business at the time he sold. All the other property both sides—

Q. What do you mean by both sides?

A. We bought up the Hidden Treasure property on the other end and we bought up the O'Neil property.

(Testimony of Charles Sweeny.)

Q. Had you bought the O'Neil property at the time you dealt with Mr. Clark?

A. Well, I don't think so; no, I think I bought it afterwards. I am not certain about that.

Q. Had bought a third interest in it, had you not?

A. We had a third interest in that country we purchased of the Poorman-Tiger. We bought that with the Poorman-Tiger, of course.

Q. That belonged to the Buffalo Hump Company?

A. Yes.

Q. Did you state to him that you wanted to get this Ella and Missing Link because it lay in between the O'Neil and the property you already owned?

A. I did not state anything to him about it at all. In doing business whenever I want to buy anything I don't generally give reasons why I want to buy it. I ask whoever has got it for sale what they will take for it, and if the price is satisfactory I generally buy it and do it pretty quick, or else I don't want it at all. That is the only way I have been in the habit of doing business. And on a small matter of this kind, three or four thousand dollars, I was not fooling around three or four days talking about it.

Q. Have you stated all that occurred in the way of conversation at the time you closed this bargain?

A. Yes, sir.

Q. Do you remember how soon after you told him to bring in his deeds and you would give him a check, that he did bring in the deeds?

(Tesimony of Charles Sweeny.)

A. He brought the deeds in I guess about the 20th. I don't know anything about that.

Q. You were not there at that time?

A. No, I was not a party to bringing in the deeds or paying the money.

Q. He says that you told him the ground of the claims was not worth fifteen dollars for the mineral, but that you wanted it for the reasons already stated. Did you tell him anything about the value of this ground?

A. There never was any question about the value in any way. Mr. Clark never asked me any questions about it, and I never told him. I think he thought, and I think justly thought, that he knew more about the property than I did. He had worked it a good many years. I don't think he thought I could tell him anything about it after having the property two months.

Mr. STOLL.—We object to that, and move to strike out that statement.

Q. He says you finally raised the price to \$4,000 and he sold it to you for that price. Who fixed the price at \$4,000? A. Mr. Clark himself.

Q. Was there ever any other price talked about for it?

A. No, sir. Never made him any offer for it.

Q. He says you then offered him \$2,500 for the Sheridan interest which he refused to take. That you owned a half interest in the Sheridan and you came back in three or four days and raised the price on the

(Testimony of Charles Sweeny.)

Sheridan to \$3,000 and he accepted it. What is the fact about that?

A. I never made any offer on the Sheridan at all. He made the price and I took the property at \$3,000.

Q. Where did he make that price?

A. In my office.

Q. On what occasion?

A. At the same time that we agreed on the price for the Ella.

Q. At the same time, it was a part of the same conversation, was it? A. Yes.

Q. Was there anything ever said between you and Mr. Clark with reference to what had been discovered in the way of values there by diamond drill workings, or by any other class of mining in the Ella and Missing Link claims or near it? A. Not a word.

Q. Did you have any conversation with him in regard to the matter?

A. Not a word.

Q. You refer of course to the time of the deal?

A. Yes, sir, that is what you are asking me about, about the time of the purchase?

Q. Yes. He says you did not make any statement to him with reference to the diamond drill explorations or work. That is a fact I suppose? A. Yes, sir.

Q. He says neither he nor his co-owners knew anything of ore having been struck in the Ella, either by the diamond drill or by the regular mining. Do you know anything about it?

(Tesimony of Charles Sweeny.)

A. No, sir; I don't know a thing of it.

Q. That is, you don't know what they knew. Who made the deal with you for the co-owners and himself?

A. Mr. Clark.

Q. Except Mr. Culbertson? A. Yes, sir.

Q. Was anything said between you and Mr. Clark at any time prior to the closing of the deal or at the time between you and him, as to Culbertson's interest?

A. Not a word.

Q. There was nothing done at the time you agreed to take these properties? A. No, sir.

Q. Nothing until the deeds were delivered?

A. No, sir.

Q. Did you ever have any conversation with Mr. Patrick Clark at his office in regard to any phase or feature of this purchase?

A. I never was in Mr. Clark's office—

Q. In Spokane?

A. In Spokane, over two or three times in my life.

Q. What occasions were those?

A. Well, I could not state the time. I could look it up and find out.

Q. You can tell about how near this time it was?

A. Oh, it was not around this time at all.

Q. Before or after?

A. Well, I am not certain whether it was after or before. I was there different times about other matters.

Q. But not in connection with this business?

A. No, sir.

(Tesimony of Charles Sweeny.)

Q. Did you ever mention at Mr. Clark's office in any conversation the purchase or sale of the Ella and Missing Link or anything in relation to it? A. No, sir.

Q. You can do as you please about telling me what your business at Mr. Clark's office when you went there was.

A. Oh, well, I have been up there on other matters, but nothing to do with this case.

Q. He says that you told him that Culbertson had sold his interest for five hundred dollars, and that Culbertson ought to know as much if not more than Mr. Clark did about the ground; that Clark told you he did not care what Culbertson sold for, that he would not give it for that money, that is, five hundred dollars; that after some talk on the subject you offered him four thousand dollars and that he took it; that this sum was for the four-fifths interest in the Ella and Missing Link. Did you have any such conversation? A. No, sir.

Q. Did you have any conversation with him in which those questions were discussed?

A. Never had any conversation with him, except as I have stated about it, or the purchase of it.

Q. They offered in evidence your annual report made on May 21st, 1901, in regard to these Burke properties, in which you made the statement that there is nothing in the lowest working to show any decrease in the value of the ores, or in their quality or quantity, and that cheap electric power later on for pumping and general purposes, there is no reason why this property should not be

(*Tesimony of Charles Sweeny.*)

worked profitably to a depth of five thousand feet. Have you anything to say about that report?

A. That is correct; I made the report. I suppose it would depend on the value of the ore.

Q. Mr. Clark says, assuming that your judgment was correct in that regard, and that these ore bodies in this ground extended downward into the earth 5,000 feet, with virgin ground above it up to the 800 foot level, this property would, he should say, be worth about a million dollars; that is, the Ella and Missing Link.

A. A pretty good price for 180 feet of ground.

Q. What have you to say about that, that it would or would not?

A. Well, no question at all what it will be worth until by development. It might all turn into first-class A-1 copper ore carrying gold or something, but 180 feet of ground I never saw worth a million dollars to anybody except a company that had facilities to work it and right next to it. They might get some money out of it. If I had it I would be glad to sell it for fifty thousand dollars.

Q. To sell what?

A. That piece of ground, 180 feet.

Q. You mean the Ella and Missing Link claims?

A. Yes, sir; very glad to sell it.

Mr. STOLL.—I move to strike that out.

The WITNESS (*Continuing.*)—and if anybody will make a reasonable offer I will enter into an agreement

(Testimony of Charles Sweeny.)

to sell it to him. That shows how much we think it is worth.

Mr. STOLL.—We move to strike out the last statement, as not responsive to any question, irrelevant, immaterial and has no place in the record for any purpose whatsoever and volunteered by the witness.

Q. Now you may state your views fully in regard to that, Mr. Sweeny, if you want to.

A. Well, I have said it there, that if anybody will make a reasonable offer for it, in the vicinity of fifty thousand dollars, I will give them a bond to furnish them a deed for the four-fifths interest in the Ella and Missing Link ground.

Mr. STOLL.—I move to strike that out as irrelevant, immaterial and not responsive to any question.

Q. Mr. Clark has made an estimate as to what the cost of equipping this property as an independent proposition would be. You have seen that estimate. Have you any controversy with it?

A. I guess Mr. Clark has got it figured about right.

Q. You own the entire O'Neil claim now, or the company does? A. The company does, yes, sir.

Q. You personally have no interest in this suit at all?

A. No, sir.

Q. And are not a party to it? A. No, sir.

Q. When you used the word "we" you mean the company with which you are connected? A. Yes.

Q. That is what company?

(Tesimony of Charles Sweeny.)

A. The Empire State-Idaho Mining and Developing Company.

Q. Has the Buffalo Hump Company any interest in this property? A. No, sir.

Q. Had no interest in it at the time of the commencement of the suit? A. No, sir.

Mr. STOLL.—That is objected to as not the best evidence, and we move to strike the answer out.

Q. At the time you were talking to Mr. Clark about the purchase of this property, that is when you first talked to him, do you know where the crosscuts were or where the showings were in the way of ore? Can you tell that?

A. Well, I knew we had run a diamond drill hole in the ground out there. I don't know whether it was in this ground or in the O'Neil ground. We knew they had run a diamond drill hole across there, and had some ore.

Q. Do you know how much ore you had, or did you know?

A. No, sir. We have done lots of diamond drill work in the Empire State properties and got some ore, and then drifted to it and then found it did not amount to much.

Q. Tell us about that; give us a little talk about that question.

Mr. STOLL.—We object to that as calling for the opinion of the witness.

Q. Oh, well, I want the facts.

(Testimony of Charles Sweeny.)

A. Well, diamond drill work, that is some of it, with us has proven satisfactory and some of it very unsatisfactory. It is a well-known fact by people who do diamond drill work and by us—I have had a good deal of experience with it—that you may often strike some ore, and it might not go over six or seven feet, and might not go over a few inches, just wide enough for the drill to go through. And of course it may develop a body of ore. The only thing which it would develop satisfactorily, in my opinion, would be that it would not pay very well to run drifts out there if you had done a good deal of diamond drill work and had not found anything.

Q. Then the profit in diamond drill work is largely in what you do not find, is it not?

A. It is a good deal in determining the character of the ground you expect to open up.

Q. Now, Joseph MacDonald testifies that he made an examination of the Tiger-Poorman mine and that he had an option of Mr. Glidden's and Culbertson's stock at thirty-five cents a share, and he says that "F. Lewis Clark and Charles Sweeny spoke to me about taking charge of all their interests in the Buffalo Hump at Burke and Wardner in case they bought the Tiger-Poorman mine." Did you have any such conversation with Joseph MacDonald? A. No such conversation.

Q. At no time?

A. No, sir, Joseph MacDonald has always been antagonistic to us. He has appeared as a witness, as a professional witness against us in nearly every case we

(Testimony of Charles Sweeny.)

have had, and under no circumstances would we ever employ him, in any confidential position.

Mr. STOLL.—We move to strike out the answer of the witness as not responsive to any question, as irrelevant and immaterial; if offered for the purpose of impeachment it is still irrelevant because the witness MacDonald's attention was not directed to us, and it was cross-examination and he had no opportunity to respond or explain the same.

Q. He says that you also asked him when he could cut loose from the Helena-Frisco people and come with you to take charge of these above-named properties, and that he told you that it would be impossible for him to get away from the Helena-Frisco before the first of the year. Did you have any such conversation with Joseph MacDonald? A. No, sir.

Q. He says that you told him you were very busy and did not have time to attend to all of these matters and that for him (MacDonald) to take charge of all of these; that he could live in Spokane like a white man away from the snows in the Coeur d'Alenes, and that MacDonald told you he would think it over and see about it. Did you have any such conversation with him?

A. No, sir.

Q. He says you asked him if he would act as advisory engineer to look after the development of the Tiger mine and give information as to machinery needed. Did you ever ask him to do such a thing?

(Testimony of Charles Sweeny.)

A. As advisory engineer, no.

Q. Did he ever act as consulting or advisory engineer?

A. Never.

Q. In any property?

A. No, sir. He was interested in the sale of the Tiger to the extent of a commission, and after we purchased it Mr. MacDonald went up there with me and Mr. Culbertson and spoke about improvements that might be put in here and there, and general conversation about the property on the surface; but never had him employed in any capacity, no confidential capacity for us at all, and never employed.

Mr. STOLL.—We object to that as immaterial and not responsive to the question, and move to strike out the answer.

Q. Did you ever contemplate employing Joseph MacDonald as your consulting or advisory engineer in connection with these properties or the Tiger-Poorman properties?

A. Never thought of it; it is unreasonable to expect that we would employ him when he has been an enemy of ours continuously ever since he has been in the Coeur d'Alene country. He has never been friendly to us, and we are not employing men of that description.

Mr. GORDAN.—We move to strike that out as not responsive.

Q. In what way had he opposed you?

A. He appeared as a professional witness against us

(Testimony of Charles Sweeny.)

in every case we ever had in the country with the Bunker Hill and Sullivan. He was connected with the Bunker Hill and Sullivan people that were opposed to us all the time. He was under Bradley's direct supervision, and is to-day.

Mr. STOLL.—We move to strike out that answer as irrelevant and immaterial, and if offered for the purpose of impeachment it is improper because the witness Joseph MacDonald did not have his attention directed to it, and was not interrogated concerning it, nor given either an opportunity to explain or deny it.

Q. MacDonald says, Mr. Sweeny, that he told you he could not take charge of those mines; that it would take too much of his time.

A. He never could take charge of them with my consent.

Q. That he thought a trip to the mine once a week would be enough.

A. I never had any such conversaton with him.

Q. He says he went through the mine and mill with you and Culbertson and outlined the improvements and "Sweeny said to Culbertson that is settled; have it done that way."

A. Well, I would not dispute that he went through the mill and the mine, because after we went up there and had bought it, and before Joe MacDonald had been settled with for his commission, Joe was around with us several times. And I don't doubt but what that conversation might have occurred as to some improve-

(Testimony of Charles Sweeny.)

ments, but anything Joe MacDonald said never settled anything with me, and I did not say so.

Q. Now, MacDonald says he visited that mine from time to time, in the capacity of advising engineer up to December, 1899, and that the consideration for his services so rendered was to be \$12,500, almost all of which has been paid.

A. I think there was no consideration for any such purpose. Mr. MacDonald released his bond on the Tiger-Poorman property—

Q. Stock, you mean?

A. Yes, sir, on the stock that he had from Glidden. I think I agreed to give fourteen thousand dollars or fifteen thousand dollars, it might be fifteen thousand dollars, I would not be positive, but the settlement was made in my house, and in some matters connected with it there was a sixty thousand dollar debt brought in in the purchase, that we did not know anything about at the time we bought the stock we found that out afterwards, those things that were extra, that they figured in, which we did not expect. Joe and I settled together, and I paid him a check for \$11,250, in full.

Q. In settlement of everything?

A. In settlement of everything.

Q. He never was advisory engineer or in any other capacity?

A. He never was employed in any confidential capacity or in any other capacity, except in connection with that purchase.

(Testimony of Charles Sweeny.)

Q. Now, in speaking of the duties he performed he says he recommended sending Culbertson to Chicago to buy a large Reidler pump to handle the water from the lowest level of the mine.

A. He never had anything to do with that; absolutely no truth in that at all; never had anything to do with it.

Q. He says he recommended raising the gallows-frame and changing the ore-bins.

A. Well, I would not dispute that. He might have spoken of raising the gallows-frame when we were walking around, when we had first bought it. There was a general conversation about matters around there, and I would not dispute that particular thing, because I don't remember.

Q. You say he might have made those suggestions?

A. He might have said something about screens, yes. He was advancing the sale and looking out for his commission and to make his commission as much as possible, I suppose.

Q. Were you dealing with him as belonging to the other side or as belonging to your side of the purchase of the Tiger-Poorman mine?

A. The only thing he had to do with the purchase is that he had an option with Mr. Glidden. Mr. Glidden was unable to sell until MacDonald was got out of the way. So MacDonald had tried to dispose of the property, as I understood, in Butte, Montana. He went up there and tried to see what he could do with it and he

(Testimony of Charles Sweeny.)

could not do anything with it, and I agreed with him that if he would stand out of the road, and we would buy it that we would give him a reasonable commission; there was no specific amount stated. After we bought it, then we had a chat about it, after we bought the stock from Glidden, and I think that we said fourteen or fifteen thousand dollars, something like that, and after that some days after we bought it, this sixty thousand dollar matter of indebtedness against the Tiger-Poorman mine was brought to our attention, which naturally we did not expect, it was a matter that came up, one of the incidents of the trade.

Q. And required the advance of that much money?

A. Required the advance of \$60,000, some of which we paid. So in the consideration of that I had a chat with Joe, and told him it was not as good a trade as we expected it to be and cost a good deal more, etc., and I thought his commission was pretty steep. and we compromised on \$11,500, and I made him my check for it in my library in my house.

Q. Now, he says you came to him and suggested that the foreman at the mine was no good, and wanted MacDonald to get you a good man, and that he sent Thomas Jay to you?

A. That is not true. We found out that Mr. Jay had left the Frisco mine for some reason or other. I believe in regard to a permit, and we were looking for a foreman, we had not had a very satisfactory man, and we thought Jay was satisfactory, so we employed Jay, and had a

(Testimony of Charles Sweeny.)

good deal of trouble to get him. Joe MacDonald entered in between us on the authorities there, and we had a pretty hard job to get that permit for Mr. Jay, altogether through MacDonald's objections to it, until finally I went and got MacDonald and took him down to Wallace, and in my presence he withdrew his objections and the permit was issued. That is the way Mr. Jay came to be employed by us. Mr. Jay had left the Frisco and was not very friendly with Joe MacDonald, so far as we knew, and so far as he stated.

Q. Joe MacDonald says that the drilling in that mine was done on his suggestion made to you.

A. That is not true. I went down through the mine with Mr. Culbertson, along about—well, in August some time, I have not got the date here, and we were speaking about the operations and what we were going to do in the mine and I told Culbertson there was a good opportunity to do some drill work, and that we had drill men down at Wardner, and when I went down to Wardner I would send the drill men up, and that was all I had to do with the drilling. I went away to San Francisco and Seattle and the Hotel Del Monte, etc., and did not get back until after all the drilling had been done.

Q. That is, the drilling in controversy in this action.

A. Yes.

Q. Had Joe MacDonald anything to do with suggesting the doing of this work or the manner in which it was done?

(Testimony of Charles Sweeny.)

A. Not a word. Mr. MacDonald never did any drill-work in Coeur d'Alenes, that I ever heard of, and he was there ten or twelve years. We were the only people, and the Bunker Hill people at Wardner, that ever did any drill work.

Q. So far as you know?

A. Well, I know that they did not; that is, up until that time.

Q. He says it was done upon his suggestion, and that he outlined the work of the diamond drill to you in the early part of August, 1899?

A. Well, there is not any truth in that. Mr. MacDonald had plenty of chances to do drill work in the Frisco, but nobody ever heard of him doing any; had a very good opportunity to do it there, even up to to-day.

Q. You don't know anything about the cores and the diamond drill, or about MacDonald seeing them, do you?

A. No; if he ever saw them he got down at night or some other time. He never had any opportunity to see them, with my consent.

Q. Did you ever give any instructions that no person who could speak the English language should be employed in connection with either the diamond drilling or the work in that mine?

A. I never gave any instructions about the employment of anybody of any kind. It was always left to the foreman and to the managers.

Q. He says that great care was taken that no one, except Sweeny and Culbertson should know what

(Tesimony of Charles Sweeny.)

the result of the diamond drill work was in that part of the mine, where it was driven, or whether any ore was struck.

A. The fact is that while this diamond drill work was done I was in San Francisco and Seattle, until after the drilling was done. I was away all of the time from the time it started until after it was finished; I was not in Burke at all during the time the diamond drill work in controversy in this case was being prosecuted.

Q. He says Culbertson and you told him to say nothing about the developments or the diamond drill work which had penetrated the Ella ground, that you wanted to get that ground from Patsey Clark and his co-owners. Did you ever have any such conversation with him?

A. No, sir; I was not there to have it.

Q. Well, that does not fix any particular time.

A. Well, I never had any conversation with him about it at all.

Q. He says he outlined the direction of the diamond drill work to you on the map and told you the slope of the hole at that point would take you into the Ella ground.

A. Well, that is not true; I never had any conversation with Joe MacDonald, and he could not show a man underground there where those holes could be driven in order to get into the Ella ground, unless he had a survey of it, which none of us had; the maps of the Tiger Company were not kept up to date.

(Testimony of Charles Sweeny.)

Q. Did you ever go underground to look at the diamond drill works with Joe MacDonald?

A. No, sir.

Q. He was not with you at any time?

A. Not in connection with any diamond drill work

Q. Was the time you were down there with Joe MacDonald before the diamond drill work commenced?

A. Yes, sir.

Q. You were never underground with Joe MacDonald in that mine after the diamond drill work commenced, that is, after you came back from California?

A. No, sir.

Mr. STOLL.—When was the last time?

Mr. HEYBURN.—He says he never was underground with Joe MacDonald after he came back from California.

Mr. STOLL.—Did he say when he was down?

The WITNESS.—Yes, Joe MacDonald was down underground with us before we had done any work and right after the purchase.

Q. At the time you were up there about the 12th of July?

A. The 16th and 17th.

Q. Yes, in July. A. Yes.

Q. But you never were underground with Joe MacDonald since that time in that mine?

A. No, sir.

Q. He says that this crosscut was driven upon his

(Tesimony of Charles Sweeny.)

suggestion to you; that he discussed the matter with both Culbertson and you, that is the south crosscut?

A. No truth in that; I don't remember the work at all on the crosscuts, but he was not present when they were run or when they were started.

Q. And did not know where it was being run?

A. He did not know a thing about it until long after the work had been done, when I came back from California.

Q. I am speaking of the crosscut that was run after you came back from California.

A. Well, I say I never knew where it was run in the ground; I know where it was; I knew there was a crosscut, but I didn't know whether it was in one piece of ground or the other, and never did know; there were no surveys made.

Q. He says that on October 13th—that is the date of the deal with Clark—both you and Culbertson were aware that the ore had been struck in that crosscut, and that Mr. MacDonald had a conversation with you and Culbertson in regard to it about that time, and that you knew that the ore in the crosscut was in the Ella ground. Is that true or any part of it?

A. Does he say where he had the conversation?

Q. The conversations he undertakes to relate, I will come to by and by.

A. I never had any conversation with him about it at all.

Q. He says you and Culbertson told him at that time

(Testimony of Charles Sweeny.)

that you were going to buy the Ella from Patsy Clark and his co-owners?

A. There is no truth in that.

Q. You don't know anything about the giving of the check to Clark? A. No, sir.

Q. Mr. Clark testifies that he had a conversation with you after you purchased these Ella and Missing Link claims, in which you told him you had an ore body 900 feet high, 600 feet wide, and which appeared on various levels, from the 1,200 up. And that this was three or four months after you bought it. Did you have any such conversation with him, and did you tell him those things?

A. I told Mr. Clark on the car once, going down to his house.

Q. What did you tell him?

A. I told him we had found some ore out on these levels, but no 900 by 600 feet, or any other specified size. I told him we had opened up some very good ore out there.

Q. Did you go into details as to the size of it?

A. No, sir.

Q. Did you tell him on what levels it was?

A. No, sir; I wish to gracious we had that body of ore there, though, 900 by 600, or any other size.

Q. Did you tell him of the ore body being in the Ella or Missing Link, or O'Neil or any other particular claim?

A. I don't think I did tell him any particular claim.

(Testimony of Charles Sweeny.)

I don't think there was any mention of the ground except it was out there.

Q. Out where?

A. Out east from the Poorman, out in that direction.

Q. Did you really know yourself just where it was with reference to those lines?

A. Three or four months afterwards, probably I knew.

Q. But at the time you talked to Clark?

A. Well, I don't remember the exact time I talked to Clark. It might have been several months afterwards. I know it was quite a while after. I might have known something of where it was by that time. It was a good many months after, I think.

Q. He says when you told him this it aroused his curiosity as to whether it might go into the Poorman extension, and he asked you about it and you said it made a turn and went around through the O'Neil ground?

A. Mr. Clark never mentioned Poorman extension to me. If he had, I would have probably found out what this suit was about here, but I am inclined to think this was about the Poorman extension instead of this small fraction.

Q. What do you mean by that, Mr. Sweeny?

A. I think they would like to sell the Poorman extension.

Q. Who?

A. Mr. Clark.

(Testimony of Charles Sweeny.)

Mr. STOLL.—We object to that as being a voluntary statement and not responsive to any question. And is irrelevant and immaterial, and I move to strike it out.

Q. Mr. Sweeny, how often were you in the Ella and Missing Link claims underground or in any way from July, 1899, up to the time you closed the purchase and the deeds were delivered on the 20th of October, of that year?

A. I was in Burke—I have got the exact time I think in my pocket.

Q. Just give us your movements from July, on to October, if you can?

A. Yes, sir, I will give it to you. On the 16th day of July, I went to Burke. I came back to Spokane on the 17th. On the 16th I went down through the mine.

Q. That is after you closed the deal for the Tiger-Poorman, wasn't it?

A. The 16th day of July, 1899. That was right after we bought the Tiger. I went right up the next day after we bought Glidden's stock. Culbertson, Mrs. Sweeny and I went up and met Presley and Miller at Warner, and took them with us. We left Spokane on the 17th, and I was there one day. I was in Spokane on the 18th and 19th of July. On the 20th I left for Seattle. On the 22d and 23d and the 24th I was in Seattle, and en route to San Francisco; went down by steamer and arrived there on the 26th.

Q. Arrived in San Francisco?

A. On the 26th day of July. On the 27th, 28th and

(Testimony of Charles Sweeny.)

29th, I was in San Francisco and left on the 29th for Del Monte. Was en route to Del Monte and around in that lower country and at Del Monte up until the 4th day of August, the 4th and 5th of August, I went to San Francisco. On the 6th, 7th, 8th, 9th, 10th and 11th of August, I was in San Francisco. On the 12th of August, I was en route from San Francisco to Spokane and arrived here on the 14th. I left on the night of the 11th and got here on the 15th. On the 16th I was in Spokane. On the 17th I went up to the Coeur d'Alenes and en route. I was in the Coeur d'Alenes on the 18th, 19th and 20th.

Q. Whereabouts in the Coeur d'Alenes?

A. Well, it don't say exactly, but up there at the mines, probably at Wardner and Burke both. On the 20th, 21st and 22d of August. On the 23d of August, I came down to Spokane. On the 24th I went back to Burke and Wardner. I came down to meet some men from New York who went up with me. On the 24th I went from Spokane to Burke. On the 25th and 26th at Wardner, on the 27th back to Spokane, on the 28th in Spokane, on the 29th in Spokane, and on the 30th I left for Buffalo Hump and was in Buffalo Hump and in Grangeville from the 31st of August until the 30th day of September, 30 odd days. I arrived back in Spokane on the 1st day of October. I was in Spokane on the 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, up to the balance of the month in Spokane.

Q. Mr. Clark says he knew nothing of any parallel

(Testimony of Charles Sweeny.)

vein having been found in the winze or in the drift. State if there was any parallel vein?

A. What winze is that?

Q. Well, in the claim or in the drift. He says he knew nothing whatever of any parallel vein having been found in the claim or in any drift that was being run.

A. I don't know anything about that; I don't know what he knew.

Q. Was there any parallel vein ever found?

A. No, sir, there was no parallel vein found.

Q. What was found?

A. There was found the same ore that he had in the 800, the same vein. Those found on the lower level, that was all.

Q. Mr. Clark testified that you told him that you had the ore on nine different levels, and had mined down to the 1800 foot level; what have you to say about that?

A. Does Mr. Clark say so?

Q. Yes.

A. Mr. Clark knew we did not have any 1800 foot level. I never had any conversation about any 1800 foot level.

Q. What is the lowest level?

A. The lowest level now is the 1700.

Q. It does not reach this ground, does it?

A. No, sir, at the time I spoke to Mr. Clark the 1600 was the lowest we had.

(Tesimony of Charles Sweeny.)

Mr. WOODS.—Mr. Heyburn, there is a mistake there, a misquotation. It is the 800. It is corrected in another place.

Mr. HEYBURN.—I am taking it seriatim. It is all right if the record shows Mr. Clark meant the 800.

Q. He says that he wanted a lease on that Ella and Missing Link ground from you. A. From me?

Q. Yes, or from anybody. Did he ever talk to you about getting a lease?

A. Never spoke of a lease at all.

Q. From anybody?

A. Not from me. I don't know what he did to anybody else.

Q. He never spoke to you about getting a lease from any other person?

A. No, sir. Nobody could do anything with that under a lease. Joe knew he could not do anything with it. As I understand he says he would open the Poorman shaft. The whole thing was caved down there for three or four hundred feet, and he could not have got in there to save his neck.

Q. Well, the Poorman shaft is only down about a thousand feet, is it?

A. That is all, nine hundred or a thousand.

Q. He says that sometime in the month of July, 1899, he talked with you regarding putting in these diamond drill holes, and that you seemed to be in doubt as to whether there was anything in that drift; that he told you he would get a lease from Clark and his co-owners,

(Tesimony of Charles Sweeny.)

that you would lease to him the old shaft of the Poor-man to hoist out the rock, whereupon you said to let it rest a while and you would think about it.

A. I didn't have any such conversation. He never mentioned anything about any lease. You could not give it to Joe or anybody else.

Q. Did you have any such conversation as this?

A. Never had any such conversation with him. The only way it could have been worked was out through the Tiger-Poorman shaft.

Q. He says about thirty days after this conversation, which would be in August, you told him not to go near Patsy Clark, that you wanted the ground yourself.

A. When does he locate the other conversation?

Q. In July, so this one would be in August.

A. Well, in August, most of the time I was away.

Q. He says you told him you wanted this property yourself and for him not to go near Patsy Clark.

A. Never had any conversation at the time with him.

Q. He says you said you would give him stock at bottom prices so that he could make more money out of it than by leasing it. This conversation was had after the drill hole was in and after MacDonald had told you it had struck ore, and of the ore that had been taken out of the core?

A. Nothing in that.

Q. You mean to say it is not true?

A. Not a word of truth in it.

Q. Did you have any talk about giving him stock at bottom prices?

(Tesimony of Charles Sweeny.)

A. Might have done it when his commission was coming to him.

Q. In lieu of the commission?

A. Might have offered him some stock for the commission, yes, but that was when the first purchase was made.

Q. You would rather have given him stock than money?

A. A little bit rather, yes.

Q. He says he had a conversation with you and Culbertson in the early part of October with reference to the purchase of the Ella ground, and that you told him you were going to buy the ground and get it cheap, and to be careful that nothing got out about the find in the diamond drill holes, and the stringer in the crosscut. Was there any such conversation?

A. Why, no. If I had had any such conversation with anybody, Joe MacDonald would be the last man on earth.

Q. Joe did not suspect you felt that way towards him, evidently?

A. Yes, Joe knew. Joe had been a professional witness against us, and had done some pretty hard work. He knew exactly how we felt towards him.

Q. He says that you in this conversation particularly named Patrick Clark and B. C. Kingsbury as persons from whom this information should be kept, and that you said if they knew they would hold you up for a big sum in making the deal, but if they did not know about the discoveries you could get it for a song?

(Testimony of Charles Sweeny.)

A. Well, there is no truth in it at all. Joe was trying to make it as strong as he could there.

Q. It seems like the usual grade of testimony he has given in this matter? A. Yes.

Mr. STOLL.—We crave permission to enter a mild protest and objection against these splendid impeaching statements made by counsel and the witness, all of which are impertinent and improper and we move to strike them out.

Q. Mr. MacDonald says that at the time the sale was made to you or the company of the Ella and Missing Link he expressed his opinion to you and Culbertson as to the value of the property, and that he told you that taking into consideration the strike in the diamond drill holes and the appearance of the vein in the crosscut, and if the ground was virgin from there to the surface, at the cheap rate at which you could mine it, it would be worth close to a million dollars. Did he have any such conversation?

A. No, sir, there wasn't anything in the ground that we knew at the time of making the purchase that would justify making any very large estimate as to its value, and we did not know whether that diamond drilling at the time of the purchase was in that ground, or not, and we had very little ore in it anyhow, and the crosscut was not very satisfactory. There were two stringers of ore in it and we did not know exactly where the crosscut was. We supposed it was in the Poorman ground.

Q. MacDonald says here that you went into the

(Testimony of Charles Sweeny.)

ground during the time he was advisory engineer about three times, covering a period of six months. Did you go into the ground when he was advisory engineer?

A. He never was advisory engineer. I never knew he was an engineer until he says so himself. Nobody ever claimed he was.

Q. Did you notice in his testimony, the school from which he said he graduated?

A. No, I did not see that.

Q. He says that Clark, meaning the plaintiff, could not have got into the mine without an order from the Court, as you told him to impress upon Mr. Jay the importance of not letting anyone down except the men going to work, and no one into the 1200 foot level, and told him to tell Jay to put men in there who did not speak the English language?

A. What time does he say this? Does he specify any time?

Q. No, he doesn't specify any time.

A. Well, there is no truth in that at all. I never told Jay anything at all.

Q. No, he does not say that. He says you told him to tell Jay:

A. I never told him to tell Jay anything. I never had anything to do with the property at all. If I told anybody to do anything at all it would be Mr. Culbertson. Even if Joe's claim is true that he was advisory engineer, and even if it was true that he was in my employ in that capacity, I never would tell him to go and

(Testimony of Charles Sweeny.)

tell Jay anything. The man in charge of the property would be the man who would get the instructions; in that case, Mr. Culbertson.

Mr. STOLL.—I move to strike that out as not responsive to any question, irrelevant and incompetent.

Q. Did you have any conversation with any person in which you told them, or even suggested or talked about the question of putting men in there who could not speak the English language?

A. No, sir, I never told anybody anything about employing anybody in the property except Mr. Culbertson, and I never told him anything about employing any individuals except when we discussed the question of foreman, and that was Mr. Jay. Mr. Jay was put into the mine at the suggestion of Mr. Culbertson that he was a good man and would like to have him, and we had pretty hard work to get him, too.

Q. You have not given any detailed attention to the width of these ore bodies or the size of them?

A. No, sir, I have not been in the mine for a year and a half, I guess. Yes, I was; I went down to see the pump once after the new pump was running.

Q. He says he wrote you some letters advising you of what was being done and found in this mine; that he wrote you three or four letters to San Francisco. Did you receive letters from Joe MacDonald at any time?

A. Well, see if he did not state the time he wrote them.

(Tesimony of Charles Sweeny.)

Q. He does on cross-examination, but not in this particular place.

A. I never received any letters from Joe MacDonald at all.

Q. About this matter during the time?

A. No, sir.

Q. He says he turned the option over to you for the Poorman stock in May. Is that true?

A. No, sir.

Q. Turned in over in July, did he not?

A. Yes, sir. I don't think it was three days after he told me that he would agree for me to take it off his hands before I bought it.

Q. It was in June was it not that he turned the option over to you?

A. I don't know. It was June 15th we bought, wasn't it, or was it July 15th?

Q. June 15th.

A. Yes, that is the time. It was two or three days before that.

Q. He says he was at the mine three or four times with you. Was he?

A. Well, he might have been. I would not say.

Q. He says he told you the result of the assays of the core taken from the diamond drill; that he thinks he wrote you first he told you afterwards, but does not know the date, but it was in August, sometime. Was that a fact?

A. In August? No, he never wrote me any letters,

(Testimony of Charles Sweeny.)

he never told me anything about the diamond drill cores because I never knew that he knew anything about it. He never mentioned diamond drill cores to me at any time. I remember the date of the purchase now was June 15th, instead of July 15th, and I want to correct my previous statement in saying July 15th.

Q. MacDonald says here that about forty-six to fifty feet in the crosscut about October 13th or a few days prior thereto, there was eight feet of ore, four or five feet being first-class ore, and he marks that on a map. Then he says, "Sweeny went down there sometime in August." That is, went to San Francisco sometime in August; that he got letters from you and wrote to you there about once a week. Is that true?

A. He never wrote any letters to me, and I never received any from him at all. But see if he does not state that he wrote letters to me at San Francisco in September? I think I remember of reading it there.

Q. He says you were talking to him about the ore in a crosscut on October 7th, and asked you to talk no more about leaving the ground?

A. On October 7th?

Q. Yes, and that this was in Spokane. Did you have any such conversation?

A. Well, I was in Spokane on October 7th. I had no such conversation with him.

Q. He says it was in Spokane that you told him you were going to buy the Ella of Clark and that you were going to have the piece of property; that it was after

(Testimony of Charles Sweeny.)

the ore was struck in the crosscut. You say you did not tell him any such thing?

A. Never had any conversation with him about the purchase from Mr. Clark at all, at any time.

Q. He says early in July he had a conversation with you in regard to putting diamond drill holes in this property; that you talked it over in Spokane and Burke, and on the trains. Is that a fact?

A. No, sir; Joe MacDonald never mentioned diamond drills to me because I was in the diamond drill business long before Joe thought of diamond-drilling up there.

Q. Did you ever offer to sell him stock at bottom prices? He says he did not take the offer?

A. I don't know about that. I might have offered to give him stock instead of commission.

Q. He says he had a conversation with you in the early part of October, with reference to purchasing the Ella and you told him that you were going to buy the ground and told him to be careful, that nothing got out about the finds in the diamond drill holes or the strike in the crosscut. This conversation was in the early part of October. Did you have any such conversation with him?

A. No, sir. I left Spokane on the 1st day of September—on the 30th day of August, I mean, for the Buffalo Hump. I was in the Buffalo Hump country the whole month of September. If all of these conversations that MacDonald speaks about had occurred, and the great

(Testimony of Charles Sweeny.)

importance of this ground had been so firmly impressed upon me, I would have stayed at home and tried to buy the ground instead of going to the Buffalo Hump country for a month or six weeks.

(Objected to as argumentative, not responsive, irrelevant and immaterial, and counsel for plaintiffs move to strike it out.)

Q. He says you told him that if Patsy Clark came up into the Coeur d'Alenes he would be a curse up there, that he would employ dynamiters and raise hell. Did you have any such conversation with him?

A. Never. Never had any conversation with him about Patsy Clark at all.

In my former testimony taken in the other office I gave a list of the directors of the two companies from memory, and it was not correct. I now have the exact names of the directors in the two corporations.

Q. (Cross.) What is the date of this list?

A. These are the directors in the companies at the time of the purchase of the property from the Buffalo Hump Mining Company by the Empire State-Idaho Mining Company. I think they are the same directors yet.

Q. You may read the list.

A. The directors of the Empire State-Idaho Company: George W. Young, George Cox, Jr., F. J. Killner, H. C. Strathy, E. J. Barney, Peter B. Bradley, Edwin Packard. Directors of the Buffalo Hump Mining Company: A. G. —————, Thomas O. Callender, Lindley Murray,

(Tesimony of Charles Sweeny.)

T. Magnus, Edwin Packard, Robert S. Bradley, E. J. Barney.

Q. Mr. Sweeny, state whether or not at any time during your negotiation or at any time before or after the negotiations for the purchase of the Ella and Missing Link Claims you have ever made any effort to suppress or misstate any facts in regard to the value or development of that property to the plaintiffs or any one on their behalf?

(Objected to as calling for a conclusion, not for a statement of any fact, leading and suggestive.)

A. No, sir.

Q. State whether or not you made at any time any statement as to the value or condition of that property that was not true as you knew the facts?

(Same objection as last above.)

A. Not so far as I know.

Q. Is there anything else that you desire to say in connection with this matter that occurs to you? You heard the statements made by Jacob Rice as to conversations had with you in regard to this property and what you had done with it. You were present when he testified?

A. No, I was not present. All I know about that was what I saw in the newspaper.

Q. Rice says that he and Mr. Justus were present at a conversation with you in your office in April, 1900. That he went there to clean up a deal on the Big Buffalo property. That you said you had just bought the Tiger-

(Tesimony of Charles Sweeny.)

Poorman at Burke, or had bought it sometime previously for \$250,000, and that you said you would not give the Tiger-Poorman for the entire Buffalo Hump, that you had run a crosscut and struck a magnificent body of ore that was paying dividends of something like \$40,000 or \$50,000 a month. Did you have any such conversations with either Rice or Justus, or in their presence?

A. I may have had that conversation as to the purchase of the property for \$250,000 and that I would not give it for the Buffalo Hump country. Probably I might have said the same thing. I was trading the other fellow for some interest they had.

Q. And you said you had run thirty or forty feet to get this ore body?

A. No, I never mentioned anything about the ore bodies, or any of the details about it. I did not know very much about the details of the property at that time, in April, 1900. I had not been there for quite a while and did not pay any attention to the development.

Spokane, January 31st, 1902, 10 o'clock A. M.

The parties met pursuant to adjournment. Whereupon the following proceedings were had, to wit:

CHARLES SWEENY, being called to the stand, his direct examination was concluded:

(By Mr. HEYBURN.)

Q. Mr. Sweeny, you may state what you paid Mr. Culbertson for the one-fifth interest in the Ella and Miss-

(Testimony of Charles Sweeny.)

ing Link claims, and the circumstances of the transaction?

A. Well, you mean my actually giving him the money?

Q. Yes, the price paid.

A. The price paid was one thousand dollars. i

Q. Well, state now.

A. I did not pay it to him; it was paid in the office.

Q. Who made the bargain? A. I did.

Q. When and where?

A. Made it at Burke. I asked Mr. Culbertson what he would take for his interest in that fraction, and he stated that he would not put any price on his interest in the fraction until after Mr. Clark and his associates had agreed to take a price, and whatever they would take he would take.

Q. When you did finally purchase it what price did you pay him for it?

A. The same price as I paid the other.

Q. Now, Mr. Sweeny, if there is anything you think of in reference to this matter that you have not testified in regard to, just state it.

A. I do not think of anything else now.

Cross-Examination.

(By Mr. STOLL.)

Q. On yesterday, Mr. Sweeny, you testified that you went to Burke on the 24th of August?

A. I guess I was there on the 24th of August. I can tell you (referring to memorandum).

(Tesimony of Charles Sweeny.)

Q. You testified you went from Spokane to Burke on the 24th of August?

A. Well, I will examine the memorandum and see if that is right. Spokane to Burke on August 24th; that is right.

Q. Now, you say also in that connection that you, on the 20th, 21st, and 22d of August, were either at Burke or Wardner?

A. The 17th, 18th, and 19th, I was in the Coeur d'Alenes, either at Burke or Wardner; and on the 20th I came down to Spokane.

Q. On the 20th you came to Spokane? A. Yes.

Q. How long were you in Spokane then?

A. I was in Spokane on the 20th, 21st, 22d and 23d. On the 24th, I went from Spokane to Burke.

Q. You came down on the 20th?

A. Yes, I came down on the 20th.

Q. And got here on the 20th? A. Yes, sir.

Q. And you were here on the evening of the 20th, the 21st, 22d, 23d, and on the morning of the 24th, you went back to Burke? A. That is right.

Q. You say that you came down to meet some men from New York who went back with you to the mine?

A. Yes.

Q. Who were those men?

A. Mr. Packard, and Mr. Callender went up with me to Burke.

Q. Anybody else?

A. Well, I am not certain. Some of them came in

(Tesimony of Charles Sweeny.)

just that day as a party, and the others came in a day or two afterwards, and we all went out to the Buffalo Hump country.

Q. State all the men that were here from New York at that time.

A. E. J. Barney, Mr. Packard and Mr. Callender were here.

Q. They were from among this list of directors that you gave us yesterday? A. Yes, sir.

Q. Mr. Packard was the president of both companies, was he not? A. Yes, sir.

Q. And you were at that time the general manager of both companies? A. Yes.

Q. Where was Mr. Culbertson at the time you went out to Burke on the 24th? A. He was at Burke.

Q. He was in Burke when you got there?

A. Yes, sir.

Q. Are you sure? A. Yes.

Q. Didn't he go with you from Spokane to Burke?

A. I am pretty sure he did not. I would not swear to it positively, but I know he was in Burke when we went up there, and I think he was at Burke when we got there.

Q. Your best impression is that he was at Burke?

A. Yes.

Q. When you got up there on the 24th, how long did you stay in Burke? A. We were only there one day.

Q. You got in on the evening of the 24th? You left

(Testimony of Charles Sweeny.)

here on the morning of the 24th and you got there towards the evening of that day naturally.

A. Well, let's see. I came from Spokane to Burke on the 24th. On the 25th, I was at Wardner and the 26th, and on the 27th came to Spokane.

Q. What time did you leave Burke on the 25th?

A. Ten or eleven o'clock in the morning, when the train comes down there.

Q. On the morning of the 25th? A. Yes.

Q. Mr. Sweeny, on yesterday you testified—and that I may quote you, I will read from your testimony—as follows: “Q. Now, Joseph MacDonald testifies that he made an examination of the Tiger-Poorman mine, and that he had an option of Mr. Glidden's and Culbertson's stock at thirty-five cents a share, and he says that F. Lewis Clark and Charles Sweeny spoke to me about taking care of all of their interests in the Buffalo Hump, at Burke and Wardner, in case they bought the Tiger-Poorman mine. Did you have any such conversation with Joseph MacDonald? A. No such conversation. Q. At no time? A. No, sir. Joseph MacDonald has always been antagonistic to us, he has appeared as a witness, as a professional witness against us in nearly every case we have had, and under no circumstances would we have employed him in any such confidential position.” Now, have you any qualification to make of that statement in any way? A. No, sir.

Q. That is the exact truth, is it?

A. That is the exact truth.

(Testimony of Charles Sweeny.)

Q. On the application for the receivership in this case, Mr. Sweeny, you made an affidavit that was filed here, didn't you? A. Yes, sir.

Q. In order that I may be perfectly fair with you (tendering the witness a paper)—

A. Go ahead and read it.

Q. No, I have a copy, and I will hand this to you so that you may follow. Is that your signature?

A. Yes, sir, I guess so.

Q. You swore to that? A. Yes, sir.

Q. I will ask you if in that affidavit you stated, speaking of Joseph MacDonald, "that the said MacDonald during the year 1899, sought to enter the employment of the companies represented by this affiant, and this affiant did consider the propriety of making an arrangement with the said MacDonald for entering the employment of said companies, but because of certain statements made by the said MacDonald which came to the knowledge of this affiant, this affiant concluded that said MacDonald was not reliable in business transactions and could not be believed either in the ordinary course of business or under oath, and therefore broke off all negotiations with the said MacDonald looking towards his employment by any of the companies represented by this affiant." Did you make that statement in that affidavit?

A. Yes, sir, I will just explain it, too. Joe MacDonald proposed to us, to me, that he would like to get that employment from me. I told him I would think about

(Testimony of Charles Sweeny.)

it. I knew that Joe MacDonald had been a witness against us in a good many cases down at Wardner, and what I saw about him is exactly as it is stated there.

Q. This then is the truth?

A. That is exactly what is the matter. And I just considered it adversely all the time.

Q. Then when you stated in your affidavit that you were considering the advisability of employing him that did not state the truth?

A. No, I did not state the advisability of employing him. I was taking his proposition under consideration.

Q. What cases was he a witness in against you?

A. He was a witness against us in the Kirby vs. The Shoshone.

Q. When was that tried?

A. I don't know the exact dates; it was three or four years ago. I can give you the exact date in the office.

Mr. HEYBURN.—About 1897 or 1898.

Q. Was Joe MacDonald a witness in that case against you?

A. Yes, sir, for the Bunker Hill & Sullivan, and also a witness against us in the King case.

Q. When was that tried?

A. That was tried—what time was it?

Mr. HEYBURN.—Two or three years ago.

Q. Two years ago before this transaction?

A. Well, it was about that time. I knew he was in the case. But I am not certain whether the case was

(Tesimony of Charles Sweeny.)

tried in the court right after this or right before this suit, but the other case was tried before that time.

Q. At the time you were considering the proposition of entering the employment of your companies, you knew he was a hostile witness against you in the case that was then pending in the courts of Idaho?

A. I never was considering his proposition, that is with the intention of employing him. Just taking his proposition under advisement.

Q. With a view of misleading him. Was that the purpose?

A. Well, there were pretty hard times in the Coeur d'Alenes at that time.

Q. I didn't ask you that.

A. Well, I am going to tell you. There were pretty hard times in the Coeur d'Alenes at that time. There was a big strike on hand. We had the Tiger-Poorman property; it was in disrepute, with the authorities all through the Coeur d'Alene District. Supposed to have been the hot-bed of all the trouble. So claimed anyhow; I don't say whether it was true or not. Joe MacDonald was with the Bunker Hill & Sullivan people. They were the people that were more in danger than anybody else in that strike. And Joe MacDonald and the Bunker Hill had a great deal to do with controlling the authorities and unions in the Coeur d'Alene District, and we were very anxious to be let alone with that property for fear it would fill up with water; so we just took Mr. Joe's proposition under consideration and let him

(Tesimony of Charles Sweeny.)

figure it out to suit himself, knowing what we would do when we got ready.

Q. For the purpose of conciliating him?

A. That is it.

Q. Then why did you say in your sworn affidavit here "that the said MacDonald during the year 1899, sought to enter the employment of the companies represented by this affiant and this affiant did consider the propriety of making an arrangement with the said MacDonald for entering the employment of the said companies, but because of certain statements made by the said MacDonald which came to the knowledge of this affiant, this affiant concluded that the said MacDonald was unreliable in business transactions."

A. Well, everybody knew that, and I too; yes, sir, the whole country.

Q. Is that part of this affidavit true, that you did consider it and that you turned it down?

A. Just exactly, because I took it into consideration in the way I stated. I let him make his proposition and I let him think what he pleased until I got ready to turn it down.

Q. Then you never did consider it seriously?

A. I never did consider it seriously.

Q. And if such a statement is contained in this affidavit it is not correct?

A. That word "advisability" does not cover it. It was not put in as full in that affidavit as it might be.

(Testimony of Charles Sweeny.)

Q. Then you did not reject it because of the fact you learned afterwards he was unreliable?

A. Why certainly, I did not learn it; I knew it all the time.

Q. Then that statement in this affidavit is not correct, is it?

A. You can twist that statement to suit yourself, Mr. Stoll.

Q. You have stated now two cases in which Joe MacDonald was an adverse witness to you in litigation?

A. Yes, sir.

Mr. HEYBURN.—And in the Stemwinder case, too?

A. Yes, sir, the Stemwinder case is another one, the third. In fact in all of the cases we have had with the Bunker Hill and Sullivan.

Q. When was the Stemwinder case tried?

A. It was under examination and in court for several years, wasn't it?

Q. I want you to testify:

A. Well, I am trying to find out the dates.

Q. Can you approximate it?

Mr. HEYBURN.—I will give you the dates from the record pretty soon.

Q. Can't you tell from memory, Mr. Sweeny, what year it was in?

A. The Stemwinder case was tried about 1900, I think. In the fall or spring term of 1900; I am not sure which

(Tesimony of Charles Sweeny.)

Q. What time was the King case tried?

A. It was tried, I think, about the same time, either one of those terms of court, wasn't it?

Q. And what was the other case he was a witness in? A. In the Kirby case.

Q. When was that tried?

A. That was tried about 1897 or 1898.

Q. What other case was he a witness in against you?

A. Well, Joe was always in every case we had up there. I can't just think of all of them.

Q. Just tell us the cases.

A. Well, there is three of the most important cases.

Q. They were the three most important ones, are they? A. Yes, sir.

Q. How long have you known MacDonald?

A. I have known Joe MacDonald about eighteen years.

Q. Known him pretty intimately? A. No.

Q. Known of him pretty well?

A. I knew him, talked to him, shook hands with him; never was intimate with him.

Q. Knew his reputation?

A. Well, I knew it, yes.

Q. What? A. Yes, sir.

Q. You have known it during all those years, as to what his reputation was?

A. Well, I knew it as his reputation grew, like everybody else with the years as they pass. Not all those years.

(Tesimony of Charles Sweeny.)

Q. You knew it just as well in 1899 as you do now, didn't you?

A. Well, I don't know; I don't think Joe MacDonald in 1899 would claim to be a consulting engineer for somebody, and then go out and testify against them.

Q. Well, with that exception? A. Yes, sir.

Q. You knew it just as well?

A. That is just the same as a lawyer going back on his client. I don't know that he had ever done that before.

Q. How much acquaintance have you had with him since 1899?

A. Not very much. Two or three months in the summer of 1899, and he went away shortly after that.

Q. Now, Mr. Sweeny, there was a case brought in the United States Circuit Court, of the District of Idaho, in the Northern Division, in which John F. Forbis and others were plaintiffs, and the Buffalo Hump Mining Company, this same defendant here was a defendant, and you were a defendant, and Lew Clark and other parties?

Mr. HEYBURN.—You were just asking him if you knew there was a suit brought? Is that the question?

Mr. STOLL.—Well, the question speaks for itself.

A. Well, there was such a suit, yes, sir.

Q. You remember the suit?

A. I remember there was a case of that kind, yes, sir.

Q. Was Mr. Graves your counsel, representing the Buffalo Hump?

(Testimony of Charles Sweeny.)

(Objected to as immaterial.)

Q. Was Mr. Frank H. Graves, Esq., of Spokane, the counsel for the Buffalo Hump Mining Company, in that suit?

A. Well, he was employed in the suit, but whether he was counsel for the Buffalo Hump Mining Company, or for Clark or for me, I don't know. Mr. Heyburn and Mr. Graves were both in the suit I think. I might be mistaken about that; I know Graves was in the suit and I think Mr. Heyburn was.

Q. He had authority to appear there for the defendants anyway? A. I think so, yes.

Q. Do you know that Joe MacDonald was a witness in that case? A. No, I was not there.

Q. I did not ask you whether you were there or not.

A. Well, I don't know a thing about it.

Q. Now, Mr. Sweeny, upon yesterday you testified that at the time you made your deal with Mr. Clark for the four-fifth interest in the Ella, you had no interest in the Ella Mineral Claim? A. Yes, sir.

Q. Either directly or indirectly?

A. Neither directly or indirectly.

Q. You did have an understanding with Frank Culbertson by which you had his interest arranged for prior to that time, didn't you? Didn't you so testify this morning?

A. I spoke to Mr. Culbertson about selling his interest and he said he would not sell it until after Mr.

(Testimony of Charles Sweeny.)

Clark and his partners sold, and whatever they took for their interest he would take for his.

Q. When was that arrangement made?

A. It was after I came back from the Hump country, I think.

Q. When was that?

A. About October 3d or 4th, along there.

Q. Where was it?

A. At Burke or Spokane, I am not certain which. I would not locate the exact place.

Q. Had you ever spoken to Culbertson before about that?

A. Well, I spoke about it to Culbertson when we first bought that property about buying up that whole territory east and west.

Q. Did you mention the Ella, particularly?

A. Mentioned no particular piece of ground, but all of it, the O'Neil ground, the Ella ground, and the Hidden Treasure on the west end. Just buy right straight through. That has always been the policy I have pursued whenever I had anything to do with a company, to get all of the territory I could. And that is the time I spoke to him first about buying.

Q. You were going to take this, although it looked so very unfavorable and the times pretty hard?

A. It was not pretty hard with the Buffalo Hump Mining Company. That company had plenty of money and was in a position to buy whatever it wanted to. There was nothing hard there that I know of in the mat-

(Testimony of Charles Sweeny.)

ter of buying things. I bought up all the ground that I could buy and proceeded to buy it at once.

Q. What time did Culbertson go east to Chicago to buy that machine?

A. About the latter part of June, I think.

Q. About the 20th of June?

A. I would not say the exact date, but somewhere about there.

Q. When did he come back?

A. Came back about the 15th of July, I think.

Q. During the time that he was east did you have any conference with him, either by mail or otherwise with reference to buying the Ella? A. No, sir.

Q. How soon after his return did you see him?

A. I saw him right away; I was there when he came back

Q. Did you talk to him about it then?

A. I don't think I did. I don't remember having any special conversation about it.

Q. After your return from California in August, did you have a conversation with him again, about buying the Ella? A. About buying the Ella from him?

Q. Well, from anybody, either from him or any one?

A. I don't believe that I did.

Q. You don't remember that?

A. I don't think I had any conversation with him. I don't think I had any more conversation with him about it except once or twice when I first told him I would buy that ground all through there, and the next time when

(Testimony of Charles Sweeny.)

I saw him what he wanted for his interest, and he would not put a price until after Mr. Clark and his partner sold out.

Q. Why did he say he would not put a price on it until after they did?

A. Well, he said they had the largest interest and he would let them sell for whatever they wanted to sell for first, and whatever price they would take he would take, that I think was very fair.

Q. Mr. Sweeny, the ore was struck in the drill hole on the 13th of August, was it?

A. Well, I don't know.

Q. How soon after it was struck did you learn that?

A. Well, when I went up—when I came back from California, I think. Of course I don't know, but from hearsay, I think it was about the 4th of August. I was not there, but I think it was struck about the 4th or 5th of August. I came back to Spokane and arrived here about the 4th or 5th of August.

Q. Did you learn of it at that time?

A. I probably learned that a few days after. I went up to the Coeur d'Alenes and probably heard of it then.

Q. Is that your recollection now?

A. Yes, I guess I heard about it as soon as I went up there.

Q. At any rate you heard of it practically the first time you went up to the mine? A. Yes, sir.

Q. Now, Mr. Sweeny, in your affidavit you made in this case, to which I will call your attention again, you

(Tesimony of Charles Sweeny.)

used this language: "This affiant says there was never but one diamond drill hole bored into the Ella and Missing Link claims by either of the defendants, or by this affiant, or by their direction, and that the said hole did not start within the Ella ground; and only went a short distance in from the easterly side of the Ella and Missing Link ground, and that there was found in said drill hole only a small ledge of concentrating ore, the value of which could not be ascertained with any degree of certainty, and was not obtained by this affiant until months afterwards."

A. That is true.

Q. Then can you tell us now, with any greater degree of certainty than a moment ago as to when you learned of the strike?

A. When I went to the Coeur d'Alenes about the 14th of August; but we didn't know where the streak was and we did not know that it was very much out of strike. I did not put very much value to the strike, as evidenced by the fact that instead of coming down and trying to buy it of anybody I went off and left it thirty or forty days.

Q. I don't care about that. Do you remember where it was and who it was that advised you of the finding of the ore in the drill hole? A. Mr. Culbertson.

Q. Where? A. At Burke.

Q. What, if anything, did you say to him at that time about doing development work in that direction?

A. Why, I told him we would run drifts and see how

(Tesimony of Charles Sweeny.)

big it was or what it was and whether it amounted to anything or not.

Q. Did you tell him they ought to do work out in that direction at that time?

A. I would not be surprised if I did.

Q. What did he say in reply to it, if you remember?

A. I told you that they were doing development.

Q. Out in that direction?

A. No, they were not doing any development except with the drills.

Q. Did he tell you that?

A. I went down and saw it myself. He didn't need to tell me.

Q. But did he tell you?

A. I don't know that he did, and I am not certain that he did not. I cannot tell what general conversation there was.

Q. As a matter of fact they were not doing any work in that particular direction?

A. They had gone away beyond that and put in their drill hole and they were drilling about that time or shortly after, and they drilled north and south both.

Q. Do you know whether or not the crosscut had been started at the time Culbertson advised you?

A. Oh, yes, the crosscut was started long before that while I was away.

Q. Now, Mr. Sweeny, did Mr. Clark give you to understand when you approached him to purchase this

(Testimony of Charles Sweeny.)

Ella claim, that he knew about the development up there of these strikes? A. No, sir.

Q. You made a statement in your affidavit here, which I will call your attention to again: "That at the time of the purchase of the said Ella and Missing Link lode claims the said Clark gave this affiant to understand that he was fully acquainted with the said mining claims and the development thereon or never asked this affiant as to such development or expressed any desire to obtain any further information or make any examination of said mining claims."

A. Well, if that is true he never asked anything about it, and I never told him anything about it. He knew more about the claims, as a matter of fact, than I did. He knew of the ore there was in there on the 800; that was the same ore.

Q. It was down to the 800?

A. Yes, sir, he knew more about them than I did and that was the same identical ore, only it was narrower on the 800, and widened as it went down.

Q. Did he know anything about the strike in the drill hole?

A. I don't think he did; he did not from me.

Q. Did he know about the crosscut being run there?

A. I don't think he did. I know he did not from me. I won't say what he knew, but he didn't know it from me.

Q. Did he know that you had been prospecting his ground at depth?

(Tesimony of Charles Sweeny.)

A. Well, I did not know myself that I had.

Q. You did not tell him that you had?

A. No, and I did not know it.

Q. Did you try to find out?

A. Not until after the drifts were run; then we found out.

Q. Not until after you purchased it?

A. Oh, yes, quite a while afterwards, three or four months, I guess.

Q. Before you purchased it? A. After.

Q. But did you try to find out before you purchased it? A. Why, no.

Q. You didn't care anything about where you were trespassing?

A. Well, we were buying all the ground, and it didn't make any difference particularly where it was.

Q. You intended to buy this anyway and concluded you would prospect it first?

A. No, sir, we did not prospect it, and didn't know we were prospecting it; we thought we were prospecting on our own ground.

Q. Did you attempt to ascertain?

A. No, we didn't have any surveys made.

Q. How many surveyors did you have in your employ at that time?

A. At that time I don't think we had any surveyors.

Q. Didn't you have Mr. Miller?

A. Yes, but he was managing the Empire State Mine at Wardner.

(Tesimony of Charles Sweeny.)

Q. Didn't you have Boothe?

A. I don't know that Boothe was in our employ at the time, or not.

Q. Refresh your memory.

A. Well, I know he has been.

Q. Did you have engineers in your employ at that time?

A. I had Mr. Miller, but Mr. Miller was not doing much engineering. He was running the Wardner property.

Q. Did you keep the progress map there?

A. At Burke?

Q. Yes? A. No, not until afterwards.

Q. And when you purchased from Mr. Clark, he made no inquiry of you of any kind, name or nature as to what you had in your lower workings in the Poorman?

A. I don't think Mr. Clark ever paid any attention to what we had.

Q. I didn't ask you that?

A. He never asked me a word about it and I never told him. The whole transaction did not occupy over fifteen minutes, the purchase of the property.

Q. What was the capitalization of the Buffalo Hump Company at that time? A. Two and a half millions.

Q. How much of the stock did you own?

A. About a tenth.

Q. How much did Lew Clark own?

A. About a tenth.

Q. You were the general manager at that time?

(Tesimony of Charles Sweeny.)

A. Yes, sir.

Q. One of the promoters of the company?

A. Yes, sir.

Q. What was the stock worth at that time?

A. About \$10.

Q. That was pretty publicly known?

A. What?

Q. The value of the stock. A. Yes.

Q. And in the face of that Mr. Clark put a price of \$4,000 upon this property and never made even an inquiry of you as to what you had at depth?

A. The Poorman-Tiger didn't have anything to do with it.

Q. Answer the question.

Mr. HEYBURN.—Make your own answers, Mr. Sweeny.

A. The Poorman-Tiger had nothing to do with this proposition.

Q. (The question was read.)

A. Never made any inquiry about the Poorman. The company owned the Poorman-Tiger properties, and owned lots of properties in the Buffalo Hump Country.

Q. And Mr. Clark— A. Hold on a minute.

Q. But you are not answering the question.

A. Yes, sir, I am answering the question. I am going to explain it. That is where the value of the stock came. It was on the Poorman-Tiger properties. It had a shoot of ore of a thousand feet long, somewhere between 900 and 100 feet, and on the prospective values

(Testimony of Charles Sweeny.)

of the Buffalo Hump properties that was the value of the stock. The stock was not based on this little fraction.

Q. Did Mr. Clark ask you what depth you had on the Tiger-Poorman mine?

A. He never asked me a word about the mine in any way. Mr. Clark thought he knew more about the mine than I did, and I believe he did.

Q. How do you know he thought that?

A. Because he operated it six or seven years and I never had operated it.

Q. You base your belief on that. Now, Mr. Sweeny, I would like to have you give me a direct answer to this question if you can do so. Do you think you had a right, and that it was quite fair dealing for you to prospect that depth in adjoining ground to that which you owned, and then attempt to purchase either that or the adjoining ground to that without advising the parties from whom you were purchasing as to what you had done—

Mr. HEYBURN.—I object to that as immaterial.

Q. (The question was read.)

A. Had a right to purchase it? Well, I didn't think there would be anything very wrong in that, no.

Q. You didn't think, what?

A. I didn't think there would be anything very wrong about that if I operated in my own territory, and from operations in my own territory got an idea as to what other things were worth, I certainly would not go on telling the whole United States about it so that they

(Tesimony of Charles Sweeny.)

could come around and place all kinds of values on it, if I wanted to buy it. It would not be business.

Q. Would you feel that you should tell the owners, to say nothing about the United States generally?

A. Why, I was supposed to be the owner of the territory in which the work was done.

Q. But I am talking about the territory you were intending to purchase. Do you think it would be entirely fair that you should suppress from them all knowledge of what you were doing there?

A. Suppressing from them all knowledge of what I was doing where?

Q. In that territory, in that ground.

A. What ground are you referring to?

Q. Any ground that you intended to purchase.

A. I was not doing anything in any ground that I really knew where I was doing it, except the O'Neil ground and the Poorman.

Q. You could know? A. How could I know?

Q. The fact that you did not know was your own fault therefore.

A. I should think the fact that these other fellows did not know was their own fault, too. If they had come around and asked any question about it they probably could have found out all about it.

Q. You knew you owned an interest in the O'Neil claim? A. I knew I owned it, yes.

Q. And you knew Patrick Clark knew that also?

A. Why, certainly.

(Testimony of Charles Sweeny.)

Q. The fact is Mr. Clark purchased that interest in the O'Neil while he was manager of the old Poorman company, for the company, didn't he? A. Yes.

Q. Now, did you know you were working in the O'Neil ground?

A. That is where we supposed we were working. And we started as it proved afterwards, in the O'Neil ground.

Q. You must necessarily have known you had gone through the Ella? A. No, sir.

Q. In order to get to the O'Neil?

A. Oh, we passed through it in the drift, certainly.

Q. And you were using that drift for the purpose of prospecting to the south?

A. We were using privileges that were open to go through there.

Q. You were using this drift through the Ella?

A. It is evident from all the evidence that the Poorman-Tiger drove these drifts, and we owned the company, and we were entitled to go through unless somebody objected.

Q. And nobody did object? A. No, sir.

Q. Did you make any attempt at any time to ascertain where the lines of the O'Neil claim were?

A. No, sir.

Q. No attempt? A. No.

Q. You simply prospected out in that direction, feeling sure that you owned the O'Neil and had a right to do as you pleased out there?

(Testimony of Charles Sweeny.)

A. Why, yes, we had an interest in it and had a right to do as we pleased.

Q. Did you make any attempt to locate the lines of the Poorman claim on the east? A. No, sir.

Q. Never attempted that?

A. No, Mr. Culbertson attended to that and I did not pay any attention to it.

Q. He was your superintendent?

A. He approximately went to work where the supposed lines were.

Q. He had authority to act for the company?

A. Undoubtedly.

Q. The Poorman is a patented and surveyed claim, is it not? A. Yes, sir.

Q. The Ella is a patented claim? A. Yes, sir.

Q. The O'Neil is patented? A. Yes, sir.

Q. Those lines were all established by United States mineral monuments so that they could be determined with absolute accuracy? A. On the surface, yes.

Q. They can be at depth too, can't they?

A. Why, certainly, by surveys.

Q. Do you know where Mr. Culbertson was on the 13th of October, the day you saw Mr. Clark with reference to the purchase of the Ella? A. No, I do not.

Q. Was he in Spokane? A. Well, I don't know.

Q. What is your impression?

A. I did not see him.

Q. What is your recollection?

A. I did not see him. He might have been in Spo-

(Testimony of Charles Sweeny.)

kane without my seeing him, and he might have been at Burke. I don't know where he was.

Q. You kept in pretty close touch with him?

A. When he came into the office.

Q. If he came into town he usually reported to you immediately, didn't he?

A. Oh, no, he did not. He had lots of business in town besides ours. He might have been over at the bank.

Q. But what time of day was it on the 13th when you met Mr. Clark in front of the Exchange National Bank?

A. Oh, I did not say I met him on the 13th in front of the Exchange National Bank at all.

Q. What day did you meet him there?

A. Somewheres from the 3d or 4th or 5th or 6th, around there, several days before the sale was made.

Q. What time of day was it you met him there?

A. Going home in the evening.

Q. Waiting for a car, was he?

A. We both generally went to that corner and got on the Pacific avenue car.

Q. This was a very small matter to you, wasn't it, Mr. Sweeny, just a mere trifle; you didn't pay much attention to it?

A. Well, I really did not, to tell you the truth.

Q. A little matter of three or four thousand dollars?

A. I didn't pay very much attention to it, no.

(Testimony of Charles Sweeny.)

Q. What did you say to Mr. Clark when you met him there?

A. I told him we would buy what properties he had up there; we were thinking of buying all the properties through there. He had some interests up there and if he would let us know what he wanted for them we would buy them. He said he would see about it, and that is all there was about that.

Q. How long have you known Mr. Patsy Clark?

A. Oh, about eighteen years.

Q. He is a mining man? A. Yes, sir.

Q. Experienced? A. Yes, sir.

Q. The fact is, he was the original promoter of the old Poorman mine? A. I think so.

Q. Of which your group at Burke is one? A. Yes.

Q. He worked that mine as general manager down to about ten hundred?

A. Yes, sir, I think so; I am not certain; down there somewhere.

Q. That old mine paid a great many dividends, didn't it? A. I think it paid about \$300,000.

Q. You applied to Mr. Clark for the claim. Mr. Clark knew that you were the general manager of the company that owned the Poorman, didn't he?

A. Yes.

Q. He knew you were doing extensive work there, didn't he?

A. Well, he knew we were doing all the work we could considering the labor conditions; I suppose he did.

(Testimony of Charles Sweeny.)

Q. He knew a new company with new capital and new blood had taken hold of the old property and was pushing it forward pretty fast?

A. Doing the best they could under the conditions.

Q. Under the energetic management of yourself and Mr. Culbertson?

A. If I had my hat on I would take it off to you.

Q. When you approached him and said to him, "If you put a price on your interest in the Ella, in the Sheridan—"

A. No, I never mentioned the Sheridan.

Q. In the Ella then?

Q. That is what I referred to.

Q. And that was all that was said?

A. I told him if the price was right we would buy it, yes.

Q. That is all that was said, was it?

A. That was about all I remember having said about it.

Q. How long were you talking there?

A. Oh, it wasn't over two minutes.

Q. Just a few minutes? A. Yes.

Q. The matter was not of sufficient consequence to spend any time over. Mr. Clark under those circumstances—

Mr. HEYBURN.—Hold on, let him answer the question.

A. Neither Mr. Clark or I was spending much time about it.

(Tesimony of Charles Sweeny.)

Q. He did not ask you how deep you were in the Poorman adjoining the Ella?

A. Why, he knew as much as to how deep it was as I did, and more. No, he never asked me anything about it.

Q. How do you know that he knew the depth of the Poorman workings?

A. Everybody knew it; it was public property. Every man in the Coeur d'Alene country, or in this country.

Q. Did you publish it in the newspapers?

A. Well, it was published in the newspaper about that time that we were doing diamond drill work up there.

Q. Then that was public?

A. I believe so, yes.

Q. And still Mr. Clark, with all this publicity that was given to the whole proposition, never even asked you whether you had found anything at depth in your lowest workings on the Poorman?

A. It would not have made any special value to that property—

Q. Just answer the question.

A. I will answer it in my way, if you please. It would not have made any special difference to that property what was found down there. That property was absolutely of no value to anybody but the people who owned the Tiger-Poorman ground, on Mr. Clark's own evidence. It would cost \$330,000 to get down there

(Testimony of Charles Sweeny.)

to get out a pound of ore. Now, I will sell the ground for pretty nearly fifteen per cent of that money.

Q. Did you authorize Mr. Heyburn to make that same bluff in New York, to sell it for \$50,000?

A. Mr. Heyburn never made any bluff in New York that I know of.

Q. Did you authorize him to make that proposition in New York, to sell it for \$50,000 and did he tell you that his bluff was called, and that he could not deliver?

A. I never heard anything of it.

Mr. HEYBURN.—Oh, tommyrot. Put that in.

A. I never heard anything about that. You can call the bluff now.

Q. Well, let us go back now to our original question, and don't wander so far, and if you will answer my questions without putting in a speech in every instance we will get along a little better. Let the stenographer read the original question.

Q. (The last question on the preceding page was read.)

A. Never asked me anything about it.

Q. He asked you nothing about having purchased Mr. Culbertson's interest?

A. No, sir.

Q. Not a thing of that kind?

A. No, sir.

Q. The next time you saw him he waited until the 13th, didn't he?

A. I can't say at all about that date; I would not say the exact date. It might have been the 11th, 12th or 13th.

(Tesimony of Charles Sweeny.)

Q. That day he came to your office?

A. Yes, sir.

Q. How long did he stay there?

A. I don't know how long he waited outside. He was sitting down there when I came out.

Q. That was in the office of Clark & Sweeny?

A. Yes, sir.

Q. You had a private office there, and Mr. F. Lewis Clark had a private office there also?

A. Yes, it could be made private. Mr. Clark's office generally connected with the outside office.

Q. Patrick Clark was sitting out in your waiting room? A. No, he was in Mr. Clark's office.

Q. He was in F. Lewis Clark's office?

A. Yes, sir.

Q. And when you appeared upon the scene he spoke up and says, we have agreed upon a price?

A. No, sir.

Q. What did he say?

A. When I appeared upon the scene Mr. Clark was sitting outside in Mr. Lew Clark's office; and I says, "Hello, Patsy." He says, "Hello." Then Lew says, "Well, Clark wants to see you," and then we all went into my own office.

Q. Lew Clark was there, too? A. Yes, sir.

Q. Now, tell us who Lew Clark is. He was your partner at that time? A. Yes, sir.

Q. He is the same Lew Clark that was defendant in

(Testimony of Charles Sweeny.)

the suit of Kennedy J. Hanley against Sweeny & Clark in the Skookum case? A. Yes, sir.

Q. The case that went to the Court of Appeals and was there decided? A. Yes, sir.

Q. The same Lew Clark?

A. Yes, sir. I would like to tell you about that case. I have a few remarks to make about that right now.

Q. Well, answer my question.

A. I will answer it. Yes, I am the same Charles Sweeny—

Q. Mentioned in that case?

A. Yes, I am the same Charles Sweeny referred to in the—

Q. What are you reading from?

A. A memorandum of my own.

Q. Who made it for you?

A. I did; nobody made it for me at all.

Q. We want it to go in evidence.

A. You can have it right here, in my writing.

Q. All right, put it in.

A. Yes, I am the Charles Sweeny referred to in the decision, and I want to say here, and I would like to have it go to the Court too, that the charges made in that case is a wanton lie, and without any foundation, and that such charges could have been conceived only by persons who are capable of planning and doing those things themselves. We bought and paid for that property, and only received what we bought, and have since

(Tesimony of Charles Sweeny.)

discovered the property has no possible value except as a ranch.

Q. You want to put that in evidence, do you?

A. You can put it in evidence, if you want to.

Mr. STOLL.—Well, I will put it in evidence. And I want all this list of companies to go in too.

Mr. HEYBURN.—There is nothing goes in except what he read. If there is anything else on that paper it will be taken off.

Mr. STOLL.—I want the paper to be attached to the record.

Mr. HEYBURN.—What he read goes in, and nothing else.

(The paper offered is marked Plaintiff's Exhibit No. 38A.)

Q. Now, Mr. Sweeny, when the door closed upon the three thus closeted, tell us what occurred? You are quite sure that Lew Clark was there?

A. Yes, sir; I think so.

Q. Now, tell us what you said, and what Lew said?

A. I think Lewis was in there; he might have been in and out. He was there at the time.

Q. All right.

A. Well, all there was to it, I asked Mr. Clark if he had determined what price he would take for the Ella. Did not say anything about the Sheridan. He said, yes, they concluded that they would take \$4,000. I said that was all right. Then he referred to the Sheridan,

(Testimony of Charles Sweeny.)

and he says I have a half interest in the Sheridan up there, and I would like to sell that too. I asked him what he wanted for it. He said \$3,000. I says, "All right, bring in the deeds and get your money." That is all there was to it.

Q. Where was Lew when this conversation occurred?

A. He was in and out of the office. He might have been in that office at the time, or outside, but he was in and out there.

Mr. HEYBURN.—Now, at this point, Judge Truitt, the Referee, having in his hands the paper from which Mr. Sweeny read his statement in regard to the Hanley case, I ask that that paper be curtailed to the statement that was read, and that nothing that was not read shall be left on it.

The REFEREE.—I do not know just what the authority of the examiner is. I do not know how much the witness read out of the paper.

Mr. HEYBURN.—The record will show that.

Mr. STOLL.—We put the paper in evidence, and the examiner, and nobody else, has the power to tear off or destroy any part of it. I will furnish you authorities on that proposition.

Mr. HEYBURN.—You will have a chance to furnish them to the Court.

Mr. STOLL.—We earnestly object and protest against that paper being tampered with in the slightest degree.

(Tesimony of Charles Sweeny.)

Mr. HEYBURN.—I would not think of asking the examiner to tear anything off. I care nothing about its visible presence on the paper. I intend the record shall show what was evidence on there; if there was a horse drawn on it, it would go with the paper in evidence, but it would not be a part of the evidence in the case.

Q. Mr. Sweeny, what interest have you in the Empire State-Idaho Mining & Development Company? How much stock do you own in it? A. Personally?

Q. I do not care whether personally or otherwise?

A. Myself and family own a million dollars' worth of stock, practically.

Q. What is the capitalization of that company?

A. Five million one hundred thousand dollars.

A. And you own one-fifth of it?

A. Yes. The capitalization is \$6,000,000, and \$5,100,000 issued.

Q. Do you own a fifth of it? A. About that.

Q. What did you own at the time of this transfer of the Empire State-Idaho stock? That is, did you own the same, or more? I mean at the time the Burke properties were transferred to the Empire State Company.

A. I had about one-tenth of the Buffalo Hump Mining Company, and I had about—well, I will give it to you exactly in figures presently.

Q. I don't care for that; just approximately.

A. I will give it exactly from the book.

Q. When will you get it for us?

(Tesimony of Charles Sweeny.)

A. I will get it for you this afternoon; or I can get it in fifteen minutes by telephoning.

Q. All right, telephone for it. Now, Mr. Sweeny, in the affidavit that you filed in this case which lays before you, and to which you have heretofore stated you signed your name, and to which you have sworn, you used this language: "The quantity of ores that have been and are being extracted from said Ella and Missing Link claims can be ascertained by the measurement of the stopes from which said ores are being taken should it be desirable to do." Did you make that statement?

A. Yes, sir.

Q. Is that true?

A. The width of the ore to be estimated by that.

Q. Is that statement true?

A. But the stope might be a little bit wider than the ore, you know; if the ore is narrow they have got to take out so much ground anyway to get it.

Q. Is this statement in this affidavit true?

A. It is approximately, of course. All those things have to be figured out by an engineer, and the condition of the ore would be a question.

Q. That being the case, how are you going to get those conditions when the ore has all been taken out?

A. How do you mean, get those conditions?

Q. How are you going to get at it?

A. That would be a question of evidence.

Q. But your evidence, which you have put in here on your oath, is that the quantity of ores that have been

(Testimony of Charles Sweeny.)

extracted from the Ella and Missing Link claims can be ascertained by the measurement of the stopes?

A. Well, that is what they were doing at the time. If they want a measurement they can have it.

Q. Can that be done in the future?

A. Well, I think so; I don't think the stopes are filled up. I don't know; I have not been up there. It is a small vein; I don't think it is filled, but it might be.

Mr. STOLL.—At this time we want to put in evidence, as a part of the cross-examination of Mr. Sweeny, the affidavit which he swore to and which he now identifies as having been signed and sworn to by him, on the 13th day of September, 1901, and filed in this court on the 13th day of September, 1901, in this case.

Mr. HEYBURN.—That is objected to as incompetent, immaterial and irrelevant.

Mr. STOLL.—This being a part of the original files we will ask to withdraw it and put it in in rebuttal.

Mr. SWEENY.—How long have you known Albert Allen?

A. I have known Albert Allen since either the summer of 1883 or 1884; seventeen or eighteen years.

Q. Since the pioneer days of the Coeur d'Alenes?

A. Yes, sir.

Q. He was one of the first lawyers in there, and you was one of the first merchants and miners in there?

A. Yes, sir.

Q. You have known him ever since?

(Testimony of Charles Sweeny.)

A. Yes, sir.

Q. Have been friendly with him during those years?

A. Well, I don't think so. He got the Tyler case up against us. He has been a lawyer against us for years.

Q. Have you anything in your pocket that you want to read about the Tyler case at this time?

A. No, sir.

Q. Or with reference to Mr. Allen's connection with it?

A. No, sir. You ask me the question, and I will give you the answer.

Q. Are you on friendly terms with him now?

A. Well, I supposed I was.

Q. Have been for several years?

A. I never had any particular relations with him of any description, except to say how do you do, when I met him. I never had any business with him.

Q. Mr. Allen is a gentleman of good standing in the community, is he not?

A. I don't know his standing in the community.

Q. You have known him ever since 1883, and you don't know what his standing is?

A. I know I have not employed him in anything, and I have had a good many of them.

Q. You only employ the gilt-edged?

A. I try to employ the best I can get.

Q. The good are all in your employ, are they, Mr. Sweeny?

(Testimony of Charles Sweeny.)

A. No, sir, I try to employ the best I can get.

Q. Mr. Allen might be good and not be in your employ?

A. Yes, sir, but I just told you exactly what I thought of him.

Q. He is a lawyer that has been practicing at this bar?

A. Yes, sir.

Q. And has been practicing in Idaho a number of years?

A. Yes, he has been.

Q. Have you learned yet the amount of stock that you hold?

A. No, I will give it to you in writing.

Q. Very well. Now, Mr. Sweeny, on yesterday you made some changes in the Board of Trustees of the two different companies as stated before by you.

A. I told you that when I gave it before I gave it to you from memory, and I wanted to get it stated correctly.

Redirect Examination.

(By Mr. HEYBURN.)

Q. Mr. Sweeny, Mr. Stoll has made you say that the crosscut drift was started before Culbertson told you about the strike in the drill hole?

A. Well, I don't think I was there when the crosscut was started I was not there when the drill hole was started. The information I had about it was quite a long time after—personal information.

Q. Is it not a fact that the crosscut was started weeks after the drill hole was bored?

A. I don't know anything about that. I was not

(Testimony of Charles Sweeny.)

there at the time it was started. I was away in California when all that work was done.

Q. I hand the witness a memorandum that comes from the bookkeeper, (Handing to witness).

A. December 15, 1900, the date of the consolidation of the companies was along about January—December 15, which was the dividend date prior thereto, I had 18,538 shares of Empire State; that is, myself and family, I had 18,169 shares, personally.

Q. (Cross.) Ten dollars per share?

A. At par value of \$10, but it was worth about \$30. My daughter Gertrude has 369 shares on December 15, 1900, of Empire State stock. And I had about a tenth of the stock of the Buffalo Hump Mining Company.

(Witness excused.)

The WITNESS.—I desire to make the following corrections in my testimony. On page 428, second answer from the top, wherein I say that Packard and Callender went with me to the Buffalo Hump country, I was in error; it was at another time that they went, and on the occasion herein referred to it was James Parks and somebody else who accompanied me to the Hump country.

In my last answer on this page, where I stated that I had one-tenth of the Buffalo Hump stock, I should have said one-fifth, and at that time I had bought Mr. F. Lewis Clark's stock.

EDWARD S. WIARD, recalled on the part of defendants, testified as follows:

Direct Examination.

(By Mr. HEYBURN.)

Q. Mr. Wiard, have you taken any samples of ore and made some tests since you testified the last time?

A. Yes, sir.

Q. From where were the samples taken?

A. Two of them were taken in the bottom of the O'Neil stope, and two in the bottom of the Ella, and some of the samples were taken on the twelve hundred foot level.

Q. Commence with those in the O'Neil stope. You say they were taken by you? A. Yes, sir.

Q. State the manner in which they were taken and over how much ground and then give us the result.

A. The first sample—these were all taken on January 22d, and among the party was Mr. Miller and Mr. Cartwright. Sample No. 1 was on the 800 foot level ten feet east from a sample taken which was exhibited in court about the 5th or 6th of January. I have it marked here ten feet east from the sample of January 2d, that being the date we were in the mine before, in the bottom of the O'Neil stope, thirty inches of ore. The sample represents a width of thirty inches. It is in the solid and on the hanging wall side. There was a streak of high-grade ore about eight inches wide. This sample was taken ten feet west from the east end of the O'Neil stope, and the assays are 15.5 ounces of lead, and 6.7 ounces of silver.

(Testimony of Edward S. Wiard.)

Sample No. 2 from the 800 foot level, ten feet west from the sample of January 2, in the bottom of the O'Neil stope, representing thirty-six inches of ore. The sample was taken thirty feet west of the east end of the O'Neil stope. The assay is 11.1 per cent lead and five ounces of silver. Those two samples are from the O'Neil, and we have two from the Ella stope.

Q. Give us those now.

A. Sample No. 3 was ten feet east from the sample of January 2 in the Ella stope, taken in the solid formation, representing thirty inches of seams, and is a general sample and assays 9.7 per cent lead and 4.5 ounces of silver.

Sample No. 4 from the Ella stope, ten feet west from the sample of January 2, and assays 16.3 per cent lead and 6.6 ounces of silver. That was taken in the solid and is a general sample.

Those four are from the bottom of the Ella and O'Neil. Sample No. 6 was taken from the west edge of the twelve hundred crosscut at the intermediate drift, and is a sample taken parallel to the twelve crosscut in the intermediate drift for a distance of five feet along the width. And the assays are 7 per cent lead and 3.8 ounces of silver.

Sample No. 7 from the east edge of the twelve crosscut at the intermediate drift over six feet of width, a general sample from the solid, as is No. 6, and the assays are 6.1 per cent of lead and $3\frac{1}{2}$ ounces of silver.

Sample No. 25, twelve crosscut at the intermediate

(Testimony of Edward S. Wiard.)

drift in the center of the track, over a width of about six feet, six inches wide in the solid, and a general sample as the other two are, and the assays are 1 per cent of lead and six-tenths of an ounce of silver. That is all I have any record of.

Cross-Examination.

(By Mr. STOLL.)

Q. Who selected the samples?

A. I took the samples.

Q. Who showed you the place to take them?

A. We proceeded from the one trench to the other that is marked out on the stopes there.

Q. You did not see the trenches made?

A. No, sir.

Q. Under whose direction were you acting?

A. Under Mr. Miller's direction.

Q. He took you to the place and told you to take a sample here? A. Yes, sir.

Q. And to take a sample there at the other place?

A. Yes.

Q. And you took those samples and made those assays? A. Yes, sir.

Q. How old are you Mr. Wiard?

A. I am twenty-six years old.

Q. Did you ever work in a mine? A. No, sir.

Q. What experience have you had in sampling ores?

A. I have had considerable experience at Wardner in sampling ore bodies there, either to determine their value

(Testimony of Edward S. Wiard.)

or to determine whether it would pay in some cases to drive various workings to work those ore bodies.

Q. How much of an experience have you?

A. I can't say as to that; I have done that kind of work.

Q. How many years?

A. During the whole time I have been with the company, three years.

Q. How long have you been with the company?

A. Three years.

Q. (Direct) You are a graduate of a school of technology are you not? Yes, sir.

Q. What do you mean by stating that you have had experience in sampling ores?

A. I have had experience in sampling ores.

Q. What experience have you had in sampling mines?

A. My experience in sampling mines is limited to my work in sampling mines at Wardner and Burke.

Q. How much experience have you had in those two places?

A. Three years. I have been with the company since my graduation.

Q. Have been engaged in sampling mines all the time?

A. No, sir, I am an assayer there at the mines, and occasionally I am sent to sample.

Q. How many times have you had occasion to sample in the mine? A. I could not say as to that.

Q. A dozen?

(Testimony of Edward S. Wiard.)

A. Yes, I have sampled more than that.

Q. Two dozen? A. More than that.

Q. Three dozen?

A. Well, it might be more than that. I have been off and on in the mines, I can't say exactly how often.

Q. About that many?

A. Probably it would be more than that.

Q. How many more?

A. I have probably taken fifty to one hundred samples in the mines.

Q. By that you mean you have gone into the mine and taken that many samples and assayed them?

A. I don't mean I have gone in there and simply picked up a sample and assayed it, but I mean sampled them for specific purposes to determine the value of ore bodies and things of that sort.

Q. Who took the samples on those occasions of which you have testified?

A. I took them or assisted in taking them.

Q. How big a sample did you take?

A. Probably five to ten pounds.

Q. Where is the remainder of your sample?

A. I had them at Wardner.

Q. How much of the pulp did you use? How much of the sample did you grind up and assay?

A. About three or four ounces.

Q. Over how wide a piece of ground did you take the sample?

(Testimony of Edward S. Wiard.)

A. Well, I stated in the evidence in each particular case.

Q. Well, state now.

A. On the twelve crosscut it was five or six feet, and up in the upper stopes it represented thirty to thirty-six inches of ore.

Q. Was it ledge matter or country rock?

A. It was in a solid ledge matter.

Q. Now, up in the Clark stopes, didn't you pick those samples? A. Pick them?

Q. Yes, in the Ella.

A. We took a general sample, an average sample clear across.

(Witness excused.)

W. GUS. SMITH, recalled on the part of the defendants, testified as follows:

Direct Examination.

(By Mr. HEYBURN.)

Q. Mr. Smith, have you made a map correctly representing the size of the openings in the stopes and the size of the ore in those openings in the property in controversy in cross-sections? A. Yes.

Q. Will you produce the map?

A. It is rather a long one (producing the map).

Q. You need not show it all. State if that map correctly shows the size of the stopes and cross-sections, and state where the cross-sections are in relation to the plan. Are they as shown by the dotted lines?

(Testimony of W. Gus Smith.)

A. It does. First we have the plan of the lower levels from the eight hundred down that are in the Ella ground, excepting a small portion in the sixteen.

Q. What is the scale?

A. Ten feet to one inch.

Q. Now, state what else is below there.

A. First we have the cross-section along the line that is produced through the territory which it is purported to be a cross-section of. That is on what is known as the south crosscut, or the crosscut running south on the twelve hundred level.

Q. Now, what is that section of; down to what point?

A. Down to the fifteen hundred foot level, beginning with the eight hundred foot level, and running down through the eleven hundred No. 3 stope to the eleven hundred foot level, then down through the twelve hundred foot or the stope from the twelve hundred foot level, which at that point reaches nearly to the eleven hundred foot level; and it shows the levels below there outlined in their positions as they are cut across; but there is no connection between them.

Q. That is there are no stopes?

A. There are no stopes at that point. The second section is along the dotted line, as indicated crossing the plan, beginning above the eight hundred foot level, in what we have termed the Ella stope near the center of the Ella lode, and shows the Ella stope, the eight hundred foot level, the eleven hundred No. 3 stope. I believe I said this was the eleven hundred No. 3 stope, but

(Testimony of W. Gus Smith.)

this is the No. 2, the first one. This is the number 3 and also the last one. But this shows the width of the ore in each case, and on each of these sections is outlined in red where it was actually measured at different times by myself or by the foreman of the mine. On the first section we began at the eight hundred foot level, or, rather, began on the nineteenth floor of the No. 2 eight hundred stope, and from that ran it into the raise on the eight hundred foot level where measurements are taken.

Q. Wherever the ledge is shown in red it is from actual measurements of the thickness of the ore?

A. On the cross-sections.

Q. Where it is shown by the dotted line, what does it indicate?

A. That indicates the width as shown by the testimony of different parties where they were not actually measured on the floor.

Q. That is, you got them from the foreman of the mine, did you?

A. Yes, sir, and from the testimony that has been given heretofore by different persons that had seen the ore stoped out.

Q. Just as soon as this question arose, then they began to measure at the mine? A. Yes.

Q. And since that time they have kept the measurements? A. Kept measurements.

Q. (Cross.) What is the width of the ore body there, that red streak? A. At this point?

Q. Yes.

(Testimony of W. Gus Smith.)

A. At that point it is thirty-six inches. At the next floor above it is twelve inches. The width and the date at which they were measured is down on each floor here on each cross-section.

Q. These figures represent the width of ledge and the date at which they were measured? A. Yes, sir.

Q. And where they are not actually measured, that is to say, the stopes before the measurements began, the figures represent the width of the ledge at that floor?

A. There are no figures given where the ledge was not actually measured, but simply outlined it with a dotted line. On the floor of the eleven hundred foot level it is accessible to the roof of the stope immediately under it, but the width is not given in the figures.

Q. This map is correctly drawn to a scale, is it?

A. To a scale of ten feet to one inch, on a large scale so as to be able to show the narrow ore bodies as they actually existed.

Mr. HEYBURN.—We offer this map in evidence.

Mr. STOLL.—We object to it because it was not made from actual measurements, at least not all of it. A portion of it is made from hearsay testimony of other persons given to this witness, upon which he bases his estimate and measurements and calculations; and therefore it is incompetent, irrelevant and immaterial.

Q. State if the plan is made from an actual survey by you? A. It is.

Q. State if the width of the stopes is made from actual measurements by you? A. It is.

(Testimony of W. Gus Smith.)

Q. The only thing that is not from actual survey are the dotted lines indicating the width of ore in the stopes before the period when the measurements commenced. Is that it? A. Where they are not colored.

Q. Outside of that the map is all made from actual measurements? A. Yes, sir.

Mr. HEYBURN.—We offer the map in evidence.

Q. (By Mr. WOODS.) I understood those red lines were from your measurements, and partly from reports by the shift-boss and foreman to you?

A. They were; nearly all of those are reports made to me by the foreman.

Mr. STOLL.—That is what we object to, and we renew the objection, and for the reasons before stated.

The WITNESS.—Some of them in the floors of the eight hundred foot level and the stopes above the eight hundred foot level, known as the O'Neil and Ella stopes, and on the twelve hundred foot level stope and the eleven hundred foot level floor in the first section here were all measured by me.

(Said map is marked Defendants' Exhibit No. 14.)

(Witness excused.)

CHARLES K. CARTWRIGHT, recalled on the part of defendants, testified as follows:

Direct Examination.

(By Mr. HEYBURN.)

Q. Mr. Cartwright, you were foreman of the mine?

(Testimony of Charles K. Cartwright.)

A. Yes.

Q. You took notes and observations of the width of the ore in the stopes, did you? A. Yes, sir.

Q. You have been a foreman during all the time since the work indicated by red on these maps was done, have you?

A. Nearly all the time. I think it was started just before I got there.

Q. How far up?

A. I think the work of taking measurements was probably started before I got there, just shortly before I started to work.

Q. Did you give Mr. Smith measurements taken from direct observation and measurements by you as to the width of the ledge? A. Yes, sir.

Q. From which this was put on this map?

A. Yes, sir.

(Witness excused.)

W. GUS SMITH, recalled on part of defendants, testified as follows:

Direct Examination.

(By Mr. HEYBURN.)

Q. Mr. Smith, is Mr. Cartwright the foreman who gave you the data from which you put this on the map?

A. Yes, sir, he is.

(Witness excused.)

Whereupon, an adjournment was taken until to-morrow morning, January 31, 1902, at 10 o'clock.

F. LEWIS CLARK, recalled on behalf of defendants:
(By Mr. HEYBURN.)

Q. Mr. Clark do you remember the occasion on which Mr. Patrick Clark came to your office on the 13th of October, 1899, in connection with the sale of the Ella and Missing Link claims to the Buffalo Hump Mining Company?
A. Yes, sir.

Q. State the circumstances as you remember them. First, did you hear Mr. Sweeny testify as to the circumstances this morning?
A. No, sir.

Q. That was before you came in?
A. Yes.

Q. All right. Just state them as you remember them.

A. I remember that Mr. Clark came in, I think, to the general offices and talked to me a little to begin with, but we did not talk anything in particular, and then we went into Mr. Sweeny's office, and talked about the weather and one thing and another for a minute, and then Mr. Sweeny said, "Well, Patsy, what do you want for that Ella ground up there?" And Mr. Clark said, "Well, if it is worth anything I guess it is worth \$4,000." We almost immediately said, "Well, all right; that's all right," and we closed the trade then and there, and there was no discussion.

Q. Was anything said about the mine or its developments or the value of it one way or the other?

A. There was no discussion at all about the property. We talked about the weather, and then this little talk came in, and then we began to talk about the weather again, or some indifferent subject, I don't remember.

(Testimony of Charles K. Cartwright.)

A. Yes.

Q. You took notes and observations of the width of the ore in the stopes, did you? A. Yes, sir.

Q. You have been a foreman during all the time since the work indicated by red on these maps was done, have you?

A. Nearly all the time. I think it was started just before I got there.

Q. How far up?

A. I think the work of taking measurements was probably started before I got there, just shortly before I started to work.

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Q. That was before you came in? A. Yes.

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A. There was no discussion at all about the property. We talked about the weather, and then this little talk came in, and then we began to talk about the weather again, or some indifferent subject, I don't remember.

(Testimony of F. Lewis Clark.)

Q. Did you remain in the room all the time during the time Mr. Patrick Clark was there?

A. I think I left when that conversation was through with, when that matter was through with. I remember that particular circumstance very plainly. I remember exactly where we were placed relatively in the room. But I think I went out shortly after that.

Q. Mr. Clark, Joseph MacDonald has testified in this case that you and Mr. Sweeny wanted him to take charge of all of your properties and employed him as consulting engineer. Is that true at any time?

A. I think I had it in mind a little, and about saying so to MacDonald, and talked to him about what he knew and one thing and another on various times and occasions. Mr. Sweeny usually had charge of those matters, and when I spoke to Mr. Sweeny about it he did not seem to have much confidence—

Mr. STOLL.—I object to the witness stating any conversation between Mr. Clark and Mr. Sweeny as being hearsay, and without the hearing of the plaintiffs, and is self-serving declaration.

Q. Go on and finish your answer.

A. I was going to say Mr. Sweeny did not seem to favor the idea, told me that he thought MacDonald had always been his enemy, and nothing was done about it.

Mr. STOLL.—We move to strike the answer out for the reasons above stated.

Q. Did you ever employ him in any capacity whatever?

(Testimony of F. Lewis Clark.)

A. I think he was paid a commission or something in the nature of a commission, or he got something in the nature of a commission on the Tiger-Poorman stock deal, but he never was in our employ.

Q. Mr. Clark you testified once before in this matter in part on a former hearing. Have you looked over your testimony as it was transcribed in that case?

A. I saw something in the "Spokesman Review" the next morning that made me say to you that I wanted to correct my testimony in a minor point.

Q. Go ahead and state it.

A. It was to this effect: That I was asked by Mr. Stoll if I had discussed with you some part of the testimony, and I said that I had not; and I intended, in stating I'd not, to cover the particular line of evidence that was then being taken. Upon reading the paper the next day it appeared as if I had denied discussing the matter with you at all, which was not so, and which was not what I intended to deny.

Cross-Examination.

(By Mr. STOLL.)

Q. Did you know the matters and things of which you have testified this morning when you were on the stand before on January 7th? A. I think so, yes.

Q. Had you discussed those matters with Mr. Heyburn prior to that time?

Mr. HEYBURN.—What matters do you mean?

Mr. STOLL.—I am interrogating the witness.

(Testimony of F. Lewis Clark.)

Mr. HEYBURN.—I object to the question unless the attorney is willing to let the witness know what matters he means. He uses a general term.

Q. (The last question was read.) Do you understand the question?

A. Well, I have had a general discussion with Mr. Heyburn about this matter prior to the hearing of January 7th.

Q. About all your testimony?

A. But of the particular line you ask me about, and that I denied having talked about—

Q. No, no, about what you testified to here this morning. Have you discussed that with him?

A. I think I had spoken upon it, but I had not given my full statement. I don't think I said everything to Mr. Heyburn that I have said here.

Q. But he knew you were familiar with those facts in a general way?

Mr. HEYBURN.—Oh, yes, I state as an attorney that I knew it.

Q. Can you verify what your counsel states here as being true, Mr. Clark?

A. I have already said that I told him a large part of the testimony that I gave here this morning, but whether I told the whole of it to him I don't recollect.

Q. Isn't it a fact you were not prepared to testify there until you conferred with Mr. Charles Sweeny upon his arrival from New York?

(Testimony of F. Lewis Clark.)

A. I have not spoken to Mr. Sweeny except as you have seen me speak to him here for a month.

Q. Have not said a word about it?

A. No, sir, I just got in this morning on the O. R. & N. at half-past nine, or whatever time it was.

Q. Where have you been? A. At Portland.

Q. Have you talked with Mr. Hepburn since the 7th of January about your testimony that you were to give here to-day?

A. I told him the other day that I wanted to correct that testimony after I read the "Spokesman-Review."

Q. That is all you have talked to him about since then?

A. I have not finished my answer. I told him this morning in regard to the Clark sale there that that was my recollection of it, that it was in the office in my presence.

Q. Was Mr. Sweeny present when you told him that?

A. No, sir.

Q. Where was Mr. Sweeny?

A. I presume he was here.

Q. Where were you? A. I was out in the hall.

Mr. HEYBURN.—Let the record show that I say I went out to confer with him myself in regard to his testimony, which I had a right to do.

Q. Now, Mr. Clark, this conversation which you have testified about this morning with Mr. Patrick Clark and Mr. Charles Sweeny at the offices of Clark & Sweeny in the city of Spokane on the 13th day of October, 1899?

(Testimony of F. Lewis Clark.)

A. Well, it is about that date.

Q. Is that the place; did I state the right place?

A. I don't remember whether we called them the Clark & Sweeny offices or the Empire State offices.

Q. We will not be so technical. They were the offices you and Mr. Sweeny occupied? A. Yes, sir.

Q. And they were partly in your private room and partly in Mr. Sweeny's private room?

A. The conversation that I told about was in Mr. Sweeny's private room.

Q. Was the door closed?

A. I think it was.

Q. Was the door closed to your room?

A. I think so.

Q. Now, then, that was two years last October, was it not? A. Yes.

Q. Did you make any note or memorandum of what occurred there so as to charge your memory with it?

A. I did not, but when I first heard about the case this summer, I was away down east, and I recollected that fact, and I saw some of Mr. Clark's testimony.

Q. That was the first thing that struck you?

A. The first thing that struck me was the incorrectness of Mr. Clark's testimony concerning that matter.

Q. But you said a moment ago that you remembered where you three were sitting? The relative positions of the three parties in the room? A. Yes, sir.

Q. Describe that; tell us where they were.

(Testimony of F. Lewis Clark.)

A. Mr. Patrick Clark was sitting on the south side of the room.

Q. Did he sit up? A. What?

Q. When you went into Sweeny's room, did he sit down?

A. I don't remember whether he sat down instantaneously or not, but he was sitting down when this conversation took place, on the south side of the room. Mr. Sweeny was sitting at his desk and I was sitting back by my door, by the door that led into the room. I don't know why it is fixed so clearly in my mind.

Q. Was the door closed between your room and Sweeny's room? A. Yes, sir.

Q. Windows open?

A. I can't say whether they were open or not.

Q. You can't remember that. You only remember the position the three men were sitting in?

A. Yes.

Q. And you remember that although two years have elapsed, and nothing appeared to impress it upon your mind at that time?

A. Well, I first recollected it last summer or last spring some time when his testimony first became public, or some of it.

Q. Have you talked to Charlie Sweeny about what occurred in that room since that?

A. I think I did tell him that that was my recollection of it.

Q. When did you tell him that?

(Testimony of F. Lewis Clark.)

A. Some time this fall, I think, when I saw him here.

Q. Did he remember it too, when you told him about it?

A. He did not state. He simply seemed to acquiesce in what I said about it.

Q. You did not have any particular trouble about agreeing upon the facts, however?

A. I don't think we endeavored to agree especially.

Q. In that conversation, Mr. Clark did you or did Mr. Charles Sweeny make any statement to Patrick Clark about the work that you did in drilling in the Ella Mining Claim? A. No, sir.

Q. Did you or Mr. Sweeny state to Mr. Clark that you had penetrated the Ella ledge with a diamond drill?

A. I have already said there wasn't anything said about it.

Q. Just answer my question. A. No, sir.

Q. Did you or Mr. Sweeny state to Mr. Clark there that you had followed up the diamond drill with a crosscut? A. No, sir.

Q. And had found a body of ore on the fault of the vein? Nothing of that kind was said?

A. No, sir.

Q. In fact, no other or further words were spoken than those you have stated here?

A. That is right.

Q. No information was given whatsoever as to the workings of the Poorman—at depth or of the drift through the Ella, or of the development of the O'Neil?

(Testimony of F. Lewis Clark.)

A. No, sir.

Q. You discussed the weather. Do you remember that particularly?

A. Oh, I remember that we discussed some subject, just as any one would.

Q. What was there about the weather or what occurred then or what has occurred since to refresh your memory as to the discussion of the weather?

A. Well, when I say that we discussed the weather I mean that we discussed some other subject.

Redirect Examination.

(By Mr. HEYBURN.)

Q. Mr. Clark, have you any interest, directly or indirectly in the result of this case? A. No, sir.

Q. You have no interest in the property or in the companies? A. No, sir.

Recross-Examination.

(By Mr. STOLL.)

Q. You were a stockholder when this suit was brought. I mean when these matters occurred?

Mr. HEYBURN.—Which do you mean? When the suit was brought?

Q. Do you understand the question?

A. Not altogether, no, sir.

Q. Well, you have testified to certain matters here this morning, Mr. Clark. For instance, you said you went into the other room and discussed the weather and then talked to Patrick Clark and heard this and that and

(Testimony of F. Lewis Clark.)

the other thing. Now, at that particular time, you understand the time, do you? A. Yes.

Q. Were you a stockholder in the Empire State-Idaho Mining & Developing Company, and also in the Buffalo Hump Company, defendants in this suit?

A. Yes, sir.

Q. You were treasurer of the company at that time, the Buffalo Hump? A. Yes, sir.

Q. And you were a stockholder equally with Mr. Charles Sweeny? A. Approximately so.

Q. Are you the treasurer of either of those companies now? A. No sir.

Q. Have not been? A. Have not been recently?

Q. You sold your holdings there to Mr. Sweeny, didn't you? A. Yes.

Q. In which Mr. Sweeny traded you other property that was made out of those ventures?

Mr. HEYBURN.—You do not have to tell what you got for the property, Mr. Clark.

Mr. STOLL.—I will insist on the question.

A. The question is not a very comprehensive one.

Q. I will explain it if you don't understand it. You and Mr. Sweeny made some money out of the Empire State-Idaho Mining & Developing Company and companies that you had precedent to the organization of that company. You also made some money and acquired some property through the promotion of the Buffalo Hump Company. You drew some dividends and sold certain stocks. Am I stating the facts correctly?

(Testimony of F. Lewis Clark.)

Mr. HEYBURN.—You need not make any replies in regard to what you got for your property or how you sold it unless you want to.

A. Well, you stated correctly that we made some money out of those various undertakings.

Q. The money that was made out of those undertakings was invested in Spokane real estate, was it not?

A. We made money out of those undertakings, and out of various undertakings, and the money we made we invested in anything that we invested in.

Q. Those real estate investments in Spokane were given to you as your share of the division, and Mr. Sweeny had these stocks in the Buffalo Hump and Empire State. That is the way you divided up, was it not?

A. I sold out my interest to Mr. Sweeny, and he paid me various considerations for what he bought from me.

Q. He traded you property in Spokane for most of it, did he not? A. He paid in property, partly.

Q. Property that you owned in partnership?

A. I don't know that we joined in a partnership.

Q. Owned it jointly? A. Owned it jointly.

Q. Had you earned it in partnership, acquired it in partnership?

A. I don't remember whether we paid for it all out of money that we made in partnership, or out of money that we had before we were in partnership. Some of it was bought one way, and some of it was bought another way.

(Witness excused.)

F. R. CULBERTSON, recalled on part of defendants, testified as follows:

Direct Examination.

(By Mr. HEYBURN.)

Q. Joseph McDonald testifies that you declined on several occasions to go down the shaft of the Tiger-Poor-man mine because you said that you were afraid of the engineer, the hoisting engineer. Was there any truth in that statement?

A. There is absolutely no truth in it. I never made any such statements to Joe MacDonald.

Q. How long were you managing the mines at Burke?

A. Fifteen or sixteen years.

Q. State whether or not you frequently and freely went up and down the shaft and through the works.

A. Whenever I had any occasion to. Very frequently went up and down the works and through the shaft.

Q. Mr. Culbertson, yesterday you heard the diamond drill man testify that he delivered those cores to you when he brought them to the surface. You may state whether or not Joseph MacDonald saw or had access to those cores after they came into your possession.

A. He never saw them.

Q. Or had access to them?

A. Nor had access to them. I am speaking now of the cores of the drillings. There were several cores in the office that were entirely out of waste. He might have seen them or anybody else that happened to be in the office.

(Testimony of F. R. Culbertson.)

Q. No ore in them?

A. There was no ore in them at all. It was simply pure, clean waste.

Cross-Examination.

(By Mr. STOLL.)

Q. Who had access to these drilling cores?

A. They were in my charge.

Q. Who had access to them besides yourself?

A. No one.

Q. Who did you show them to?

A. My impression is that I had them assayed and that that was the end of it.

Q. Did Mr. Sweeny have access to them?

A. Mr. Sweeny was not there.

Q. Well, ever afterwards?

A. I can't say whether Mr. Sweeny ever saw them or not.

Q. Will you say that he did not?

A. Yes, I can state that he did not. Come to think about the matter I can state that he asked me what I had done with them, and I told him I had had them assayed and thrown them away, and he wanted to know if I had had them checked up, and why I had not had them checked up.

Q. What did you say in response to that?

A. I stated to him that I was familiar enough with the ore to be able to tell about what it would run without having any assay of it; that I was satisfied about what the ore ran, from my familiarity with the ore.

(Testimony of F. R. Culbertson.)

Q. When did that conversation occur?

A. That occurred on Mr. Sweeny's arrival from Frisco, in August.

Q. Whereabouts in your office did you keep those drill cores? A. Kept them in the back office.

Q. In the safe?

A. No, they were put in a cupboard.

Q. Who had access to that cupboard?

A. No one but myself.

Q. You did not allow anybody else to have access to it except yourself, did you?

A. Well, that was a private cupboard of my own.

Q. Was it locked, put a key on it?

A. Yes, sir; always had been locked.

Q. What are those cores like that came out of there?

A. What were they like?

Q. Yes.

A. They were very much broken up; some of them half an inch, an inch, and an inch and a half long.

Q. You can tell from the character of the ore or of the core, the quality of the ore that had been penetrated in the ledge, could you not?

A. I could form a reasonable estimate of it.

Q. Sufficiently so that you did not need to have it assayed? A. Oh, I had it assayed.

Q. But you say you could have done so without having it assayed?

A. The object in assaying it was more to determine

(Testimony of F. R. Culbertson.)

the ratio of silver to the per cent of lead than anything else.

(Excused.)

W. CLAYTON MILLER, recalled on part of defendants, testified as follows:

Direct Examination.

(By Mr. HEYBURN.)

Q. Mr. Miller, state whether or not you were underground in the Tiger-Poorman, or in that combination of mines before the purchase of the Tiger-Poorman by the Buffalo Hump Company, and for how long?

A. Not for six or eight months anyway, for the reason I had been tied up down in the Buffalo Hump country, and came out of the Buffalo Hump June 6th to Spokane. Came up here about June 7th or 8th. That was just prior to taking hold of the Tiger properties.

Q. You heard me read from Albert Allen's testimony that he said Sweeny told him you had made an examination of the mine and found a split vein and so on? Was there any truth in that statement that you did?

A. The first time I went underground was with Mr. Sweeny and Mr. Culbertson and somebody else, I don't recollect who it was, after the purchase, when Mr. Culbertson showed us the different faces.

Cross-Examination.

(By Mr. STOLL.)

Q. Mr. Miller, you made an affidavit in this case?

A. Yes, sir.

(Testimony of W. Clayton Miller.)

Q. Is that your signature; are you satisfied with that? A. Yes.

Q. I will call your attention to a portion of it: "That from the month of July, in the year 1899, to April, 1901, he was consulting engineer of the Tiger-Poorman mines, then owned and operated by the Buffalo Hump Mining Company, the defendant herein. That affiant was, during the year 1894, and until January 10th, 1895, acquainted with the mining claims mentioned in the complaint and called the Ella and Missing Link lode claim. That during all of said times he has been thoroughly conversant with the nature and character and extent of the development work upon said mining claims and all of them; the nature, character and value of the ores extracted therefrom, plans of operation and projected plans of operation of the said mining claims and property." Did you make that statement?

A. Yes, sir.

Q. Under oath? A. Yes, sir.

Q. (By Mr. HEYBURN.) Is it true?

A. Yes, sir; it is true.

(Witness excused.)

Mr. HEYBURN.—The record may now show a formal offer of all assays, samples of ores, maps, papers, etc., that have been used by the defendant's witnesses.

Mr. STOLL.—Here is a paper I would like to have opened and published by consent of counsel. It is a report of a commissioner at New York that he did nothing.

(Testimony of W. Clayton Miller.)

Mr. HEYBURN.—I object to having it published. It has nothing to do with the case.

Mr. STOLL.—At this time we object to the use of the testimony of Charles Sweeny, and move to strike it out, unless obedience is made to the order of Judge Beatty of this Court, by paying to the plaintiff's in this case the expense of going to New York to take Sweeny's testimony, the amount of which expense is \$1,500, which amount we now demand of you.

Mr. HEYBURN.—Let the record show that whenever the usual cost bill under the practice recognized in the courts is settled we will pay it. There has been no cost bill presented, no memorandum presented, no demand made. The Court made the order under which it should be settled, and when it is settled it will be paid like any other costs.

Defendants rest.

W. S. NORMAN, sworn on part of plaintiffs, testified as follows:

Direct Examination.

(By Mr. STOLL.)

Q. What is your business, Mr. Norman?

A. I am one of the proprietors of the Hotel Spokane.

Q. Were you the manager of the Hotel Spokane in the city of Spokane, in the State of Washington, during the month of October, 1899?

A. I was president of the company.

(Testimony of W. S. Norman.)

Q. Did you, during that period of time, keep a record of the arrival of guests? A. Yes, sir.

Q. Have you that record here? A. Yes, sir.

Q. Will you produce it, and turn to the arrival of Mr. Culbertson, on the 13th of October, 1899?

A. (After examining.) He did not arrive on the 13th of October. It was September.

Cross-Examination.

(By Mr. HEYBURN.)

Q. Your record does not show that Mr. Culbertson was at the Hotel Spokane on the 13th of October, does it? A. No, sir; it does not.

(Witness excused.)

Whereupon a recess was taken until 2 o'clock P. M., this 31st day of January, 1902.

Spokane, Washington, January 31, 1902, 2 o'clock P. M.

J. R. RIVERS, a witness sworn on behalf of plaintiffs, testified as follows:

Direct Examination.

(By Mr. STOLL.)

Q. What is your business?

A. Shorthand reporter.

Q. Did you report the case of John F. Forbis et al., Plaintiffs, vs. The Consolidated Tiger-Poorman Mining Company, The Buffalo Hump Mining Company, F. Lewis Clark, Charles Sweeny, W. B. Heyburn, L. A. Doherty, Bruce Clendenning, C. K. Edwards, and Willis Good-

(Testimony of J. R. Rivers.)

speed, Defendants, in the Circuit Court of the United States, for the District of Idaho, Northern Division?

A. I did.

Q. At that time did you take the testimony of Joseph MacDonald, a witness that was sworn upon that case?

A. Yes, sir.

Q. Did you afterwards transcribe his testimony?

A. I did.

Q. You may look at this, which is the original files, and state if that is a transcript made by you of his testimony which was filed in the case,

A. I recognize this transcript as being made by me.

Q. Is that a correct transcript of his testimony as given and taken in shorthand by you, and reduced to writing?

A. I will say, to the best of my knowledge and belief it is. It is my opinion that it is. Of course, I took this two years ago, and I have not had a chance to compare it with my notes.

Q. That was filed in the court as the official copy?

A. It was.

Q. Have you your notes?

A. I have the notes, but at the present time they are at Moscow, Idaho.

Q. How long will it take you to get them here?

A. I could get them here by three o'clock to-morrow afternoon.

Mr. STOLL.—We want to put Mr. MacDonald's testi-

(Testimony of J. R. Rivers.)

mony in evidence at this time in rebuttal, and if you insist on it, we will wait for the notes to come.

Mr. HEYBURN.—(After examining the transcript.) I will say this, that I will make no objection, because it is not the notes of the stenographer.

Mr. STOLL.—That is all right, then. Now, we will offer in evidence, at this time, in rebuttal, the following papers of portions of the record in the case of John S. Forbis, et al., Plaintiffs, vs. The Consolidated Tiger-Poorman Mining Company, the Buffalo Hump Mining Company, F. Lewis Clark, Charles Sweeny, W. B. Heyburn, L. A. Doherty, Bruce Clendenning, C. K. Edwards, and Willis Goodspeed, Defendants, tried or pending in the Circuit Court of the United States, for the District of Idaho, Ninth Circuit, Northern Division, to wit: The certificate of the examiner, Warren Truitt, dated 13th day of January, 1900, being the page which we now ask the examiner to have marked for identification Plaintiff's Exhibit No. 39; and also pages beginning at page 130, where the witness Joseph MacDonald appears to have been called as a witness for the plaintiffs in that case, and cross-examined by defendants' counsel, being the counsel for the defendants in this case, the Buffalo Hump Mining Company, continuing from page 130 to and including page 142, and we will ask the examiner to mark those pages for his identification as Plaintiff's Exhibit, No. 40, and we will take leave to substitute as a part of the record in this case copies of those pages which may be made under the direction of the examiner.

(Testimony of J. R. Rivers.)

The book from which these pages are offered was filed January 16, 1900, by A. L. Richardson, Clerk. The offer is made specially for the purpose of showing the cross-examination of Joseph MacDonald, and what was drawn from him at that time on such cross-examination by the counsel for the defendant in this case, the Buffalo Hump Mining Company. The certificate to the correctness of the testimony is certified by Judge Warren Truitt, Examiner, and bears date of the 19th of January, 1900.

Mr. HEYBURN.—We object to this offer of the testimony of Joseph MacDonald, as incompetent, irrelevant, and immaterial. We object to the certificate of the examiner as incompetent, irrelevant, and immaterial. It appears from the testimony offered, that Joseph MacDonald was a witness against the present defendants.

Cross-Examination.

(By Mr. HEYBURN.)

Q. MacDonald was called as a witness for the plaintiff's in that action, was he?

A. I have no personal recollection.

Q. Examine your record, please, and see.

A. (After examining the record.) Yes, that is right. He was a witness for the plaintiff.

Q. That is for Forbis, and against the present defendants, the Buffalo Hump Company.

(Said documents marked respectively Plaintiff's Exhibits Nos. 39 and 40, and copies to be substituted. The certificate of Judge Truitt conceded to be genuine.)

(Witness excused.)

Plaintiffs' Exhibit No. 39.

JOSEPH McDONALD, being first called and duly sworn as a witness on behalf of the plaintiff's, testified as follows:

Direct Examination.

(By Mr. STOLL.)

Q. Mr. McDonald, state your business, and place of residence?

A. Mine manager; residence, Gem.

Q. You know the defendants, Charles Sweeny and F. Lewis Clark? A. Yes, sir.

Q. What is the fact, Mr. McDonald, of your having had an option or a contract to purchase the stock owned by S. S. Glidden and F. R. Culbertson, in the Consolidated Tiger & Poorman Mining Company in June of 1899?

Mr. GRAVES.—I object as irrelevant and immaterial.

A. Well, now, I could not say whether it was in June or not, but I had such, I think.

Q. What was the date of the contract, if you remember?

Mr. GRAVES.—I object as not the best evidence.

A. I do not remember.

Q. What year was it in; what month?

Mr. GRAVES.—Same objection.

A. What will I do, answer it or not?

The EXAMINER.—Just as soon as Mr. Graves puts in his objection, go on and answer it.

A. Well, I could not say the month.

(Testimony of Joseph McDonald.)

Q. What year was it in?

A. I said last year, 1899.

Q. What portion of last year?

A. I think I got that some time in March. Now, if you want me to go on and explain the whole thing, how I got it, I could get at it, but this way of getting in the middle of it, it is hard for me to call up the dates, you know.

Q. That would not be material. What was the price that you were to pay for that stock?

Mr. GRAVES.—I object as irrelevant, immaterial, incompetent; not the best evidence. Contract shows for itself.

A. Well, the contract or the agreement we had before the—well, I do not know as it is necessary to say that. The agreement we had was, I was to pay—when I got the option, the agreement was I was to pay thirty-five cents a share for it, and then Culbertson was to get a commission of three cents a share for Glidden's stock, and also for any other stock he could secure for me. That was the agreement made before I examined the mine at all.

Mr. GRAVES.—I want to move to strike out the evidence, as irrelevant, immaterial, hearsay, and not the best evidence.

Q. Do you know where that contract is now, Mr. McDonald?

A. Why, I think Charley Sweeny has got it.

Q. What did you do with it?

(Testimony of Joseph McDonald.)

A. Well, now, that contract—let's see, the one that was between Glidden and I, I do not know where it is, but my report is what Sweeny got. I do not know what he done with the contract, because that was put in the bank. Never seen it after we signed it here. It was drawn up in your office and signed.

Q. What became of your interest in the contract, Mr. McDonald?

A. Why, I turned that over to Charley Sweeny.

Q. Did you receive anything for it?

Mr. GRAVES.—Objected to as irrelevant and immaterial.

A. Why, yes, I received something for it.

Q. What did you receive?

A. Well, now I could not tell you what I received for that alone, but I could tell you what I received for all I was to do for the parties and for this contract and other work I was to do for them.

Q. Answer the question; state what it was.

A. It was \$11,250.00; that is my recollection of it.

Q. Now state the conversation that occurred between you and Mr. Clark and Sweeny at the time you turned this contract over to them; state where it was.

A. It was—the conversation took place one evening.

Q. Well, go back before that; had you seen Sweeny on the train? A. Yes.

Q. Just state all of that conversation?

Mr. GRAVES.—I object as immaterial and irrelevant.

A. Mr. Sweeny was on the train with me, going up

(Testimony of Joseph McDonald.)

to the Coeur d'Alenes. We were talking over things in general, and I told him that I had examined and had a report on the Tiger & Poorman mine. He said, "Have they got anything up there?" I said, "Do you want to see it?" "I will show it to you," and I showed it to him. He looked it over. He asked me, "Will you let me have this, so I can look it over at my leisure?" I said, "Yes, you can have it as long as you want to," so he called me up over the 'phone one day, after that sometime—I do not know how long—asked me if I could not come down to Spokane, he wanted to talk to me. I told him all right—I wired him. When I got up town, the day I was coming down, I found a note at the hotel saying to come out to his house. So I went out to his house that evening. Mr. Clark was there, and Mr. Sweeny. The first thing regarding this that Sweeny said to me, he says, "Can't you break loose from that company you are with," he says, "and come with us?" he says, "I am getting busy." he says, "and I want to turn the management," he says, "of all that I have got over to you." I told him I could not possibly do that until the first of the year. "Well," he says—"now," he says, "if we bought this—

Q. Bought what?

A. If we bought this—referring to the Tiger & Poorman—he says, "We will make it an object for you, if you will come," he says, "you can live here in Spokane," he says, "and not be up in all that snow and bad country up in the Coeur d'Alenes"; he says, "You can live here in Spokane," he says, "like a white man."

(Testimony of Joseph McDonald.)

Well, I told him I realized that, but I did not see how I could get away before the first of the year; we had other matters on hand. "Well," says he, "If I make a deal, or buy this Tiger-Poorman, can you—" No, Clark says that—Clark says, "If we buy this Tiger & Poorman mine," says he, "would you act as consulting engineer, in the way of putting in machinery, and such changes as you mention in your report ought to be made," and I told him I could if it didn't take up too much time. Sweeny says, "I do not care if you do not go up more than once a week—give the outline of what you want, and what you know is the best machinery, and have it put in," and I says, "I could do that." He says to me, "Another thing—what do you want," he says, "for this report and option you hold on so much stock?"

Q. Stock in what?

A. Well, he did not say. I understood, of course, it was the Tiger & Poorman; you know that was what the conversation was about. "Why," I says, "I will leave that to yourself. I did not think I would realize anything out of it on account of the labor troubles; in fact, I says, "Mr. Campbell turned it down; I will leave it to yourself." He says, "How will \$12,500.00 do?" I says, "It is like finding it; I will take it; very glad to get it." So I was.

Q. Did they ever pay it?

A. No, never paid that.

Q. What did they pay?

A. They paid \$11,250.

(Testimony of Joseph McDonald.)

Q. When was this, if you remember?

A. Well, sir, I think it was in May, but I am not certain. I could tell you if I was at home.

Cross-Examination.

(By Mr. GRAVES.)

Q. Now, you said this \$11,250 was for other things, too; explain what it was all for?

A. In fact it was for getting this mine up in shape so they could work. The thing was run down so it was practically—well, it was no good, because they were running in debt all the time. I showed in my report the advantage of putting in the proper machinery, and the proper machinery in the mine and in the mill, so as to handle it, and I believed there could be a profit made on the mine by putting this in. I estimated an expenditure of \$125,000, to put the mine in shape to pay dividends.

Q. What did you do toward getting the mine in shape, what did you, yourself do?

A. Well, I went up there on several occasions. Sweeny took Culbertson up and he told Culbertson to take his book with him. Now he says, Joe. Culbertson has wore out a gross of pencils figuring, and he says, I want you to tell him what you want done here. Well, walked up to look to the gallows frame—

Mr. STOLL.—When was this Joe—just excuse me—before or after you turned your contract over?

A. After, I think—yes, it was after. I told them to raise the gallows frame some thirty feet higher. Ex-

(Testimouy of Joseph McDonald.)

plained to them how they could do it. They claimed they could not, but we done it by using plank instead of great timber—plank was easier handled at greater height—makes just as strong work. Then we took the level at that height across to the mill, and I recommended putting in a large crusher 12 feet below that level so that the ore would have a general trend down the hill—stop this re-elevating they had there, conveying ore from the bottom of the mill back up again, and that would do away with several men. And also the changing of their jig machinery, which portion of it was running too fast, and did not give the ore time to settle on the beds of the jigs, and the changing of their trammels, that was running too fast and would carry the ore over and drop it down in place of sliding along the trammel and throw it right over, and the changing of the tables—of what we call the round tables, and vanners. Then the mine—that was, I think, all recommended on the surface. Then in the mine I recommended them, and furnished them the data and expense it would cost—recommended them to get a Reedler pump, made by Fraser & Chalmers of Chicago, to put down at their bottom level, and showed them the actual saving that that would give them over the present pumps they were using, taking the test made at the Helena & Frisco as a basis. Two pump men would run this Reedler, while there were 14 men engaged in running their old pumps. Now this is stating just part what was in the report, you know, too, and what I told them as we went along. Now that is all at that time that I done,

(Testimony of Joseph McDonald.)

for work at that time. About a week afterward I went up and got Culbertson to go East and purchase the pump and some electric machinery.

Q. Well, did you furnish them with directions as to the manner of putting in that machinery?

A. Yes, sir.

Q. Development of the mine?

A. Furnished them the men to do it with. Took them from my own crew. Sent our own superintendent up there, and also the master mechanic, because they did not have any one. Sweeny came down there; said he did not have a man that knew anything at all. He said he had to have them, and I just took these two best men I had and gave them to him to straighten them out, which they done. Got the mine dry inside of three days after they went up there, ready to go to work.

Q. Now, this \$11,250, that was paid you, was paid you for your report and for your services and for this option?

A. Yes, and other work that was to come up between that and—the time I would go over to them entirely, you know.

Q. Now you did not attach any separate value in the arrangement, to your option?

A. No, it was kind of a general thing, you know.

Q. You did not regard that as of any value, I understood you to say? A. No, sir, I did not.

Q. You just simply turned that in to them along with the report, the benefit of your examination of the mine and your directions? A. Yes, sir.

(Testimony of Joseph McDonald.)

Q. And assistance in the improvements necessary.

A. I did not make a price on anything. They made me this offer, if I did so and so—do this work for them. In fact, I am doing work for them right up to this date.

Q. For that same money?

A. Well, that is all I ever expect to get out of it.

Q. The developments and improvements in that mine that have been made up to the present time, since they took control of it, been under your advice and direction?

A. Yes.

Q. And in accordance with your recommendations?

A. It has.

Q. So that work and that machinery—

A. (Interrupting.) That is, it is partly done. They did not follow it out altogether, what I wanted. They did not get the machinery I wanted them to get; he found something cheaper, and went and bought it—Culbertson.

Q. That is to say, what they bought was not as expensive as you recommended? A. That is right.

Q. What you had recommended or did get, was it necessary to be gotten to put the mine on a working basis?

A. Yes, it was; they ought to have put in a whole lot better. They are going to have trouble there, just as sure as you are a foot high.

Q. Was that work necessary to preserve the mine?

A. Yes, without it the mine was absolutely worthless, except the surface improvements. The books showed they were way in debt.

(Testimony of Joseph McDonald.)

Mr. STOLL.—We object to this as not responsive to the question. The books will speak for themselves.

A. The books showed they were way in debt; oh, as high as eight and ten thousand dollars a month. There was a great deal of that due to old machinery and mismanagement together.

Q. You examined the books in connection with your option? A. Yes, sir.

Q. Was the mine paying—had it been paying at any time, according to your examination of the books?

A. Yes, it had; the books showed where it paid—

Mr. STOLL.—(Interrupting.) We object as improper cross-examination.

Q. Go on.

A. Yes, the books showed that it had a year or eighteen months before that paid some dividends.

Q. Which one was it?

A. Now I will take that back, when I say dividends; paid some back debts, do you see?

Q. Yes.

A. And they showed where there were one dividend paid, but Culbertson explained that and said—

Mr. STOLL.—Wait a minute; we object, this is getting out of all range of cross-examination. Nothing brought out in chief about this, one way or the other. Improper cross-examination.

Q. Go on.

(Testimony of Joseph McDonald.)

Mr. STOLL.—Irrelevant, immaterial, hearsay, and not the best evidence.

A. I came to a place in the books where there were \$4,000, I believe, paid in dividends, and I says to Culbertson, I says; how is this \$4,000 here; I thought, I said, you paid ten? Well, he said, we own sixty per cent of the stock, and he says, to stop those small stockholders from howling, he says, we paid them a dividend, but did not pay ourselves any—we had sixty per cent.

Q. The books showed four thousand actually paid?

A. Yes.

Q. Now what is the character of that mine as to being a deep mine and wet mine and so on?

A. It is down about 1,500 feet. Six months in the year, I think, they pump about 500 gallons of water a minute; three months, about 700; three months, about 1,100; that is in the wet—when the snow is going off.

Q. How is that 1,500 feet for the depth of a lead mine, as compared with other mines in the Coeur d'Alenes?

A. Now when I say that is 1,500; that is, 1,500 from the top of the shaft, but from the top of the hill where they slope, averages I think, about 2,200 on the dip of the ore, or the dip of the vein, you might put it more proper.

Q. Well is there any other deeper mine in the Coeur d'Alenes? A. No.

Q. Are there any other lead mines as deep in the United States? A. I do not know of any.

Q. You have had a good deal of experience in mining?

A. Yes been at it twenty-five years.

(Testimony of Joseph McDonald.)

Q. Good deal of experience in mining in the Coeur d'Alenes? A. Been there for eight years.

Q. Could the improvements that you recommended have been made for any less than the sum you have stated in your report, \$125,000?

Mr. STOLL.—I object to it as improper cross-examination.

A. No, they could not.

Q. Are you familiar with the improvements they have made there; the new machinery—the new work they have done? A. Yes, I am.

Q. Aside from criticism you have made that it has been too cheap—machinery has not been as good as it ought to be, has the work been done in a good and workmanlike manner? A. Oh, yes.

Mr. STOLL.—We object as improper cross-examination; incompetent, irrelevant, and immaterial.

Q. And good mining required that for the preservation, care and development of the mine? A. Yes.

Mr. STOLL.—I object to it as incompetent, irrelevant, immaterial; improper cross-examination.

Q. Was it possible to make that mine pay anything—to be operated at all at a profit, except by the expenditure of some such sum of money in making those improvements and developments?

Mr. STOLL.—I object as improper cross-examination; incompetent, irrelevant, and immaterial.

(Testimony of Joseph McDonald.)

A. No, sir, it was not possible for to make her pay expenses.

Redirect Examination.

(By Mr. STOLL.)

Q. Sweeny, he bought the mine on the strength of your report, didn't he, Mr. McDonald?

A. Well, sir, I am sure I could not tell you.

Q. Do you know whether he had any other report or not?

A. Oh, yes, he had three or four. He had some other fellows up there, I think; I heard about Clayton Miller being up there.

Q. Well, you recommended the purchase, didn't you?

A. Well, now, I do not know as I done that. I gave just the figures as I found them, and stated what would be necessary to do to put the mine on where it would pay some dividends.

Q. Where is your report?

A. Well, I think that there is a copy of it—I think Culbertson has got it, the maps and the report, and I think Sweeny has got some—got the maps, and I believe the report went to Culbertson. I know I gave him the maps and he came to me for another set; he says they took them away down from the office here in Spokane, and then after that I sent him some photographs of the maps.

Q. You gave a very complete report on it from start to finish, didn't you, to Mr. Sweeny?

A. Well, yes, I think it was.

(Testimony of Joseph McDonald.)

Q. That is the first notice he had of the condition of the mine—was your report and your conversation?

A. That, of course, I could not tell, what he had.

Q. You think so, don't you, from what occurred between you?

A. Well to say that was the first notice he had, of course, I could not tell that.

Q. Didn't you call his attention to the mine?

A. Yes.

Q. Your report, and show it to him?

A. Certainly I did.

Q. After he examined your reports and your maps, he telegraphed you to come to Spokane? A. Yes, sir.

Q. And then paid you this \$11,200 for that report and your other services and your option on that stock?

A. Not at that time.

Q. Was it afterward? A. Yes.

Q. And for other services on the mine? A. Yes.

Q. Now, how many trips did you make up to the mine there, to assist them?

A. I think I went up about once a week up to the first of the year, and sometimes twice.

Q. After what time?

A. Well, after Mr. Sweeny had bought it.

Q. Well, when was that?

A. Well, I suppose it was somewhere in May or June.

Q. Now, when was it that Culbertson went east to buy this machinery, do you remember?

(Testimony of Joseph McDonald.)

A. Right after I laid out the plans for them at the works that day; suppose about a week afterwards.

Q. In May or June; sometime along there?

A. Yes.

Q. When was it that Sweeny bought the stock from Glidden, with reference to the time that you made your first trip to the mine?

A. I could not tell you the date.

Q. Well, did you go to the mine for him, before he bought Glidden's stock, or afterwards?

A. Oh, it was—I suppose it was after, because—it was after that I went to the mine, was after; I suppose he had it bought, that I went.

Q. Now, what conversation did you have with Sweeny, if any, with reference to putting in this machinery at that time?

A. Well, the conversation had—I told him what was the proper machinery to put in.

Q. What did he say about doing so; did he say he was going to do it? A. Yes.

Q. And then sent Culbertson east, did he?

A. I presume so, yes.

Q. Well, he said so there, didn't he?

A. Yes—well, it was this way we discussed the matter whether to send him east or have the representatives of those machinery men come out to the Tiger mine.

Q. And he asked you what amount it would cost to put that machinery in at that time? A. Yes.

(Testimony of Joseph McDonald.)

Q. And you gave him the items? A. Yes.

Q. He approved of that and accepted your ideas of it, did he?

A. Well, I think he did, because he went to work and done it.

Q. And this was in May or early in June?

A. I believe it was. I could give you the dates, if I was at home.

Q. Well, you know—

A. (Interrupting.) It was right in that time, you know.

Q. It was before the first of July, anyway?

A. Oh, yes, I think so; I believe it was.

Q. Now who paid the men that you sent up; you sent a crew of men you say up there to help them out on different occasions, who paid those men?

A. Well, I suppose that Sweeny did. I didn't do it.

Q. It was not a part of your contract that you were—

A. (Interrupting.) To pay these men?

Q. Yes. A. Not much.

Recross-Examination.

(By Mr. GRAVES.)

Q. Well, did you go to work for Clark & Sweeny on the first of the year, and are you working for them now—for this company?

A. No, I did not go to work for them on the first of the year; in fact, I told them some time ago that I did not believe I could get away, because we had a lot of other

(Testimony of Joseph McDonald.)

options on a lot of mines all around there, we had to attend to, and I could not go; that was the long and the short of it. Things were so situated I could not leave where I was.

(Witness excused.)

State of Idaho,)
) ss.
County of Latah.)

I, Warren Truitt, examiner for the United States Circuit Court for the District of Idaho, Northern Division, do hereby certify that the foregoing testimony of the respective witnesses therein named, on behalf of the plaintiffs, was taken before me at the city of Spokane, State of Washington, at the dates named in connection with their testimony, by stipulation of the parties in said action; that before these witnesses testified they were each duly sworn by me to tell the truth, the whole truth, and nothing but the truth, and then the foregoing testimony of each witness, as named therein, was taken and written down in my presence, by J. L. Rivers, the stenographer agreed upon by the said parties, to report the same; that during the taking of said testimony, the plaintiff appeared by his attorneys, John O. Bender and Stoll & MacDonald, Esquires, and the defendants appeared, as noted in said testimony, by their respective attorneys, Messrs. Heyburn, Price, Heyburn & Doherty, for defendant. The Consolidated Tiger and Poorman Mining Company, and Messrs. Graves & Graves, for the Buffalo Hump Mining Company, and it was stipulated

before me by said attorneys for the respective parties as above named, that the testimony of all witnesses named therein, as noted and written out by the said stenographer, should be taken and accepted as the testimony of said witnesses, and reported to the Court by me as such without being signed by the witnesses, subject to such objections as appear thereto. And I further certify that the several exhibits which accompany said testimony were offered in evidence by the plaintiffs as noted therein. Dated this 13th day of January, 1900.

WARREN TRUITT,
Examiner.

J. G. WEBB, being duly sworn on behalf of plaintiffs, testified as follows:

Direct Examination.

(By Mr. STOLL.)

Q. What is your business, Mr. Webb?

A. Am in the real estate business.

Q. Do you keep, or were you connected with the management of the Review apartments during the summer and fall of 1899 in the city of Spokane?

A. I was.

Q. Did Mr. Culbertson stop with you during that summer? A. Occasionally, yes.

Q. Did you keep a record of his arrival and departure? A. I did.

Q. Have you a record showing whether or not he was with you in the month of August, beginning from the 20th on? A. I have.

(Testimony of J. G. Webb.)

Q. Please turn to it, if you have. Who made that record you have in your hand? A. I did.

Q. When did you make it?

A. I made this on Sunday evening, August 20, 1899.

Q. Do you know whether or not it correctly states the facts? A. I do.

Q. You know that of your own knowledge?

A. I do.

Q. The entry is in your handwriting is it, Mr. Webb?

A. Yes, sir.

Q. I will ask you, Mr. Webb, to read that entry that you have?

Mr. HEYBURN.—I want to cross-examine him before it is read.

Mr. STOLL.—After it is read, you may do so. I will ask him another question first.

Q. Mr. Webb, you may state when Mr. Culbertson arrived at your place and when he departed and how long he remained there, between the 20th and 25th of August? A. (Turning to the book.)

Mr. HEYBURN.—I object to the witness using the book for the purpose of answering.

Mr. GORDON.—He may use the book for the purpose of refreshing his memory on that point.

Q. You may answer the question, and in doing so use any memorandum you have.

Mr. HEYBURN.—I object to the witness referring to the memorandum which he is attempting to read from

(Testimony of J. G. Webb.)

to refresh his memory until I have had an opportunity to examine him as to that memorandum for the purpose of determining when it was made, by whom it was made, and its genuineness.

A. Mr. Culbertson came to our place on Sunday evening, August 20th, after dinner, and remained there until Thursday morning, the 24th day of August, I think it was, after breakfast. That is the entry I have, and that is the only way I know it.

Q. That was in the year 1899?

A. 1899, yes, sir. Of course, if I hadn't that entry I could not tell anything about it.

Q. Who made the entry?

A. I made the entry myself.

Q. Was it made at the time?

A. Yes, sir, I always made them when the—

Q. (Interrupting.) Does it correctly state the facts?

A. It does.

Cross-Examination.

(By Mr. HEYBURN.)

Q. I notice that the writing in your entry or memorandum has been made at two different times?

A. Yes.

Q. When was that entry made as to the time he left?

A. When he was leaving.

Q. Who was with him at that time?

A. Well, his family were all there. That is, Mrs. Culbertson and Libbie, and the nurse, and his sister I think was visiting him at that time. I think so. I have

(Testimony of J. G. Webb.)

got their entries when they arrived before he did, several days before he did.

Q. And you swear that he was there about the date of that book entry? Let me see what there is about it to indicate the date? As to the year what is there to indicate the date? You say this was in 1899?

A. Yes, sir; you will see, not at that entry, but two or three entries before, I have mentioned 1899, July, 1899; but just at that entry I did not put 1899; but it is 1899, for you will see before and after.

Q. And you made this entry at that time?

A. Yes, sir.

Q. You are just as positive you made this entry as to when he left, at the time?

A. Just as positive, yes, sir. You see, the reason I made that entry when he left, Mr. Heyburn, is this: Mr. Culbertson as a rule did not settle; it all went into a running account with the family, and the only way I would know how many days he was there when he went away was to make check on there; and then when the month was up—I never rendered any account until they were going away; and when the time came that Mrs. Culbertson was going away, of course I would refer to that book to see how many days Mr. Culbertson was with me.

Q. Is that your hotel register?

A. We had no hotel register.

Q. Well, that is the only one you had?

A. That is simply a memorandum.

(Testimony of J. G. Webb.)

Q. That was to you a register of arrivals and departures at your hotel?

A. Of the arrivals, yes. I put that down so as to see what I was charging them and what arrangement we had made and all.

Q. Have you any recollection as to whether he was there all of that time or went away and came back?

A. He was away all the time, out of the house, with the exception of his meals and nights. But he was not away from town outside. He was at home at night from the 20th to the 24th. He went away after breakfast on Thursday the 24th.

Q. That is the 24th is it?

A. Yes. It is entered there, the 24th, I think.

Q. I would like to know if that record shows the 24th and not the 26th?

Mr. STOLL.—You can put it in expressly that it is the 24th. We do not claim it was the 26th.

Q. (By Mr. CULBERTSON.) I went away on Thursday morning the 24th after breakfast.

A. Yes.

Mr. STOLL.—We will offer that entry in evidence.

Q. Have you any objection to putting the entire book in evidence, Mr. Webb?

Mr. HEYBURN.—There is no use of talking all that into the record.

Q. Well, just read the entry, Mr. Webb.

A. Well, as I have it, "Frank Culbertson arrived on

(Testimony of Charles S. Eltinge.)

letter shown you, Defendants' Exhibit No. 11, was not received by Mr. Clark?

A. I did not say it was not received by Mr. Clark.

Q. It might have been received by Mr. Clark?

A. Yes.

Q. And handed over to you for action?

A. It might have been, yes.

Q. Or Mr. Clark might have told you to have that deed made up and sent to Mr. Culbertson?

A. No, Mr. Clark did not tell me that.

Q. How did you come to send that deed to Mr. Culbertson?

A. I think Jim Clark gave me the deed to send to him.

Q. Do you know how Jim Clark came to do that?

A. No. I know there had been some talk in regard to it. Jim Clark had been spoken to about it by some one, and I got after him to get it, I think.

Q. Jim Clark was in Rosslund at that time, was he not?

A. I don't remember whether he was or not. No, I don't think he was, though he might have been.

Q. Where did Jim Clark execute the deed that you sent up?

A. It must have been in the office, I think.

Q. Have you any recollection on the subject?

A. Yes. I remember of his signing the deed.

Q. Mr. Eltinge, didn't you take this acknowledgment by telephone?

A. No, sir.

(Testimony of Charles S. Eltinge.)

Q. Mr. Eltinge, when this deed was acknowledged you filled in Mrs. Culbertson's name at the request of Mr. Culbertson, didn't you?

(Objected to as immaterial.)

A. I could not tell until I see the deed.

Q. Did you have any other instructions as to the making of this deed than the instructions you have stated?

A. I think Mr. Culbertson spoke to me about getting a deed from Mr. Clark, and I spoke to Jim about it every time I saw him, and eventually it came in. That is all the recollection I have about it.

Q. You saw Mr. Culbertson spoke to you about getting the deed?

A. Mr. Culbertson spoke to me about getting the deed.

Q. Where?

A. Some time when he was in the office there.

Q. Where? Mr. Clark's office?

A. Oh, it might have been. I don't know whether it was there or in the bank. I remember Mr. Culbertson spoke to me about getting a deed from Jim.

Q. Fix that time, Mr. Eltinge.

A. I could not do it. It must have been some time previous to this date; it might have been just immediately previous, or two or three months.

Q. Have you any recollection on the subject at all?

A. That is to the best of my recollection.

Q. But have you any real recollection on the subject?

(Testimony of J. G. Webb.)

Sunday evening, August 20th, after dinner for a few days. Left on Thursday, August 24th, after breakfast."

(Witness Excused.)

CHARLES S. ELTINGE, sworn on behalf of complainants, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Eltinge, where do you reside and what is your present business?

A. I reside in Spokane. I am cashier of the Traders' National Bank.

Q. What was your business or employment during the summer and early fall of the year 1899?

A. I was clerk for Mr. Patrick Clark; that is, secretary.

Q. As such secretary to Mr. Clark what were your duties?

A. I had charge of all his business there in the office.

Q. Including correspondence?

A. Correspondence and everything of that kind that came up.

Q. Receipt and acknowledgment of letters?

A. Yes, sir.

Q. Handing to the witness Defendants' Exhibit No. 11, run over that, Mr. Eltinge, and I will state that it purports to be a press copy of an original. Having examined it, please state whether you recognize that as a copy of any letter ever received by Mr. Clark, or by you,

(Testimony of Charles S. Eltinge.)

as secretary, during the period of your employment as Mr. Clark's secretary?

A. I do not think I ever saw it before.

Q. I hand you Defendants' Exhibit No. 12. Is that your signature, Mr. Eltinge? A. Yes, sir.

Q. You may state whether or not that letter was written in response to the Exhibit No. 11, the press copy that your attention has just been directed to?

A. No, sir.

Q. How are you able to state that?

A. Because my recollection is that this letter was written at the request of Jim Clark.

Q. Referring to exhibit No. 12, your own letter?

A. Yes.

Q. Had that exhibit No. 12, been written in response to a letter received on that subject, is there any signification in the fact that it makes no mention of the receipt of the other letter?

A. Why, yes. If I had received the other letter I would undoubtedly have mentioned it in this, if this was in response to it. I would have said something about it.

Q. Handing you now Defendants' Exhibit No. 13, do you recognize that as a copy of any letter received by you while in the service of Mr. Clark as secretary?

A. I might have received that.

Cross-Examination.

(By Mr. HEYBURN.)

Q. Mr. Eltinge, how are you able to say that the first

(Testimony of Charles S. Eltinge.)

letter shown you, Defendants' Exhibit No. 11, was not received by Mr. Clark?

A. I did not say it was not received by Mr. Clark.

Q. It might have been received by Mr. Clark?

A. Yes.

Q. And handed over to you for action?

A. It might have been, yes.

Q. Or Mr. Clark might have told you to have that deed made up and sent to Mr. Culbertson?

A. No, Mr. Clark did not tell me that.

Q. How did you come to send that deed to Mr. Culbertson?

A. I think Jim Clark gave me the deed to send to him.

Q. Do you know how Jim Clark came to do that?

A. No. I know there had been some talk in regard to it. Jim Clark had been spoken to about it by some one, and I got after him to get it, I think.

Q. Jim Clark was in Rossland at that time, was he not?

A. I don't remember whether he was or not. No, I don't think he was, though he might have been.

Q. Where did Jim Clark execute the deed that you sent up?

A. It must have been in the office, I think.

Q. Have you any recollection on the subject?

A. Yes, I remember of his signing the deed.

Q. Mr. Eltinge, didn't you take this acknowledgment by telephone? A. No, sir.

(Testimony of Charles S. Eltinge.)

Q. Mr. Eltinge, when this deed was acknowledged you filled in Mrs. Culbertson's name at the request of Mr. Culbertson, didn't you?

(Objected to as immaterial.)

A. I could not tell until I see the deed.

Q. Did you have any other instructions as to the making of this deed than the instructions you have stated?

A. I think Mr. Culbertson spoke to me about getting a deed from Mr. Clark, and I spoke to Jim about it every time I saw him, and eventually it came in. That is all the recollection I have about it.

Q. You saw Mr. Culbertson spoke to you about getting the deed?

A. Mr. Culbertson spoke to me about getting the deed.

Q. Where?

A. Some time when he was in the office there.

Q. Where? Mr. Clark's office?

A. Oh, it might have been. I don't know whether it was there or in the bank. I remember Mr. Culbertson spoke to me about getting a deed from Jim.

Q. Fix that time, Mr. Eltinge.

A. I could not do it. It must have been some time previous to this date; it might have been just immediately previous, or two or three months.

Q. Have you any recollection on the subject at all?

A. That is to the best of my recollection.

Q. But have you any real recollection on the subject?

(Testimony of Charles S. Eltinge.)

A. I don't exactly understand your question.

Q. When I speak of real recollection, would you have any recollection on the subject if your mind was not refreshed by any conversation, memorandum or data? Have you any recollection because of the fact?

A. It is just a faint recollection I have that I was spoken to in regard to the deed, I think, by Mr. Culbertson.

Q. But you are not sure?

A. I am not sure; but I saw Mr. Culbertson quite often and I think he spoke to me about it and asked me to see Jim and get the deed, and so I spoke to Jim about it, and I think the next time he came into the office, about this time, he gave it to me.

Q. How are you able to remember that you or Mr. Clark did not get this exhibit No. 11 letter?

A. I do not remember ever seeing the letter before.

Q. Have you still got his correspondence that was received?

A. No, sir.

Q. What did you do with it?

A. I suppose it is in his office. I don't know.

Q. Did you open all of Mr. Clark's mail?

A. When he was absent I did, yes, sir.

Q. Was he absent at the time that letter, exhibit No. 11, would be received?

A. I do not know, I could not say.

Q. Where was Mr. Clark during the period from the 20th to the 25th of August, 1899?

A. I could not say.

(Testimony of Charles S. Eltinge.)

Q. Do you know whether he was in Spokane or not?

A. I do not.

Q. No recollection on that subject at all?

A. No.

Q. Could you refresh your memory by any memorandum or data of any kind?

A. I might be able to in some way; I don't know.

Q. Mr. Clark might have received that letter without your knowing it? A. Certainly.

Q. And he might, after receiving it, have told you to have him, Clark, make up a deed?

A. He might have done so, yes.

Q. You do not remember that he did not do so?

A. No, I do not remember that he did or did not, either one.

Q. Jim Clark was here in Spokane at that time, was he?

A. He must have been here the day I wrote this letter, yes.

Q. And you never received that letter acknowledging the receipt of the deeds?

A. I say I might have received that; undoubtedly did.

Redirect Examination.

(By Mr. GORDON.)

Q. That is exhibit No. 13 you now refer to?

A. Yes, exhibit No. 13.

Q. What was the practice or custom of the office during the period for which you were secretary for Mr.

(Testimony of Charles S. Eltinge.)

Clark as to preserving and keeping files of all letters received? A. They were generally kept.

Q. Files preserved?

A. They were while I was there, yes, sir.

Q. When did you cease there?

A. About two years ago, last September I think it was—September or October.

Q. I will ask you whether this letter, Defendants' Exhibit No. 12, which was written by you was written in response to the original of exhibit No. 11?

A. No, sir.

Q. Sir? A. No, sir.

Recross-Examination.

(By Mr. HEYBURN.)

Q. You are cashier of the 'Traders' National Bank, of this city? A. Yes.

Q. Mr. Clark is one of the directors of that bank, is he not? A. He is.

Q. You were secretary to Mr. Clark up to about two years ago, you say? A. Two years ago last fall.

Q. You went directly into the bank from his office?

A. Yes.

Q. About the time he became interested in the bank?

A. Shortly afterwards, yes.

Q. After you went into the bank did you have charge of his correspondence? A. No, I did not.

Q. Who took your place in his office?

A. I think a young man by the name of Jimmy Stewart was in there, but I am not certain.

(Testimony of Charles S. Eltinge.)

Q. Have you the letter-book in which the imprint of exhibit No. 12 was taken?

A. No, I have not the letter-book.

Q. Where is that letter-book?

A. I don't think there was any imprint of that taken at all, for the reason it was written at Jim Clark's request, and had nothing to do with the office at all.

Q. You have not charge of Mr. Clark's letter-book covering this period of September 7th, 1899, have you?

A. No, I have not charge of it.

Q. Have you it in your possession? A. No.

Q. Where is it?

A. I don't know. But I will say that letter was never copied.

Redirect Examination.

Q. When you wrote as secretary for Mr. Clark how would you sign?

A. I would sign Patrick Clark, By Eltinge.

Q. How is that letter signature?

A. Charles S. Eltinge. That letter was written for Jim Clarke. It had nothing to do with the office at all.

Q. Not for Patrick Clark?

A. It had nothing to do with the office at all.

(Witness excused.)

PATRICK CLARK, being recalled on behalf of complainants, testified as follows:

Direct Examination.

(By Mr. STOLL.)

Q. Mr. Clark, did you hear the testimony of Mr. Sweeny to the effect that in the early days of October, in front of the Exchange National Bank in Spokane, he had a conversation with you? A. Yes, sir.

Q. Did you have that conversation at that time or place, or at any time or place, or any conversation of that character or import with Mr. Sweeny?

A. Not at that time or place.

Q. Did you at any other time or place have that character of conversation?

A. I had a conversation with him in my office.

Q. Is that the conversation to which you testified in chief in this case when you were on the stand before?

A. Yes, sir.

Q. Did you hear the testimony of Mr. Sweeny and Mr. F. Lewis Clark to the effect that you went to their office in the Wolverton Block in this city, and entered Mr. Lew Clark's private office, and afterwards with him went into Mr. Sweeny's office and there had a conversation with Sweeny in the presence of both Sweeny and Lew Clark concerning the sale of the Ella Mineral Claim?

A. No such conversation ever took place.

Q. Were you at that office at that time?

A. I was there to hand the deed to Mr. Lewis Clark

(Testimony of Patrick Clark.)

for the ground in controversy, and the only time I ever was in their office.

Q. That was on the 20th of October, was it not?

A. Yes.

Q. You state that is the only time you were ever in their office? A. The only time.

Q. Did you see Charles Sweeny there at that time?

A. No.

Q. Did you have the conversation which they claim you had at Sweeny's office at any time or any place with them? A. Not with them.

Q. Did you ever have any other conversations with Sweeny concerning the purchase and sale of the Ella Mineral Claim excepting those of which you testified in your direct examination when you were on the stand before? A. No, sir.

Q. Did you ever have any conversation with Lew Clark at all in person or when he was present concerning the sale of the Ella?

A. I never had any conversation with Lew Clark only when I went in there to hand him the deed, as I stated in my examination before.

Q. Mr. Culbertson has testified (I believe you were present when he gave his testimony at San Francisco at the Palace Hotel) that on the 20th day of June, 1899, in the city of Spokane, on the street, he had a conversation with you in which you said to him, "I understand you have sold out your interest in the Tiger-Poorman. where-upon he replied, 'Yes, we have sold out,' or words to

(Testimony of Patrick Clark.)

that effect. Whereupon you said in effect, 'Well, it is about time to get out of that country and let some other fellows wrestle with those things. You have had enough of it, or words to that effect.'” Did you ever have that conversation with Mr. Culbertson?

A. No, never.

Q. Where were you on the 20th of June, 1899. Mr. Clark? A. I was at Atlantic City, New Jersey.

Q. What hotel were you staying at?

A. Brighton Hotel.

Q. Have you the register of that hotel here?

A. Yes, sir.

Q. Please turn to your arrival there at that time?

A. Monday, June 19. I registered there on June 19th, and left there on July 6th.

Q. Is this registration here of "P. Clark and Fam., Spokane, Wash.," in your handwriting?

A. Yes, sir.

Q. When was it made by you?

A. On the 19th of June, 1899.

Mr. STOLL.—We offer that entry in evidence, and we will also offer and have copied into the record all of the entries on that page.

Mr. HEYBURN.—That is objected to as immaterial and irrelevant.

(Said page of the register, containing the entry identified by the witness, together with all entries before and after it on said page, with headings of columns, were copied therefrom as follows:)

(Testimony of Patrick Clark.)

REGISTER.

HOTEL BRIGHTON, 1899.

Monday, June 19th.

	Bath
Mr. and Mrs. George Flagg, Philadelphia....	359 L
Miss Adelaide G. Flagg, Philadelphia.....	359 L
Master Paul M. Flagg, Philadelphia.....	360
Master Geo. L. Flagg and Maid, Philadelphia.	358 L
Charles W. Dunes (M. D.), Philadelphia.....	— L
Charles W. Dunes, Jr., Philadelphia.....	— L
Mrs. Preston Lea, Wilmington, Del.....	— L
Mrs. Thrapps Maid, Philadelphia.....	354 D
Mrs. F. Percy Smith and Maid, Philadelphia..	346 D
Miss Katharine Smith, Philadelphia.....	350 D
Miss Elizabeth Page, Philadelphia.....	349 D
Winthrop Percy Smith, Philadelphia.....	n347 D
Mrs. James H. Sherman, Philadelphia.....	252 D
.....	101
P. Clark and fam., Spokane, Wash.....	110 D
.....	165
.....	166 D
Mrs. C. Waugh, Summit, N. J.....	230 D
Master Randall Waugh, Summit, N. J.....	
.....	230 D
Augustus G. Cobb.....	260 D
Geo. A. Shepard, New York.....	147 Ldg.
W. A. Miles, Washington, D. C.....	131 Ldg.
	Bath

(Testimony of Patrick Clark.)

Mr. and Mrs. Chas. Y. Andenried, Philadelphia. 226 Ldg.
 B. P. Barren, Tiffin, Ohio. 258 Ldg.
 Townsend Scott, Baltimore. 314 Ldg.

Q. Mr. Clark, where had you been prior to going to the Brighton Hotel, and when did you leave Spokane; just give us your whereabouts?

A. I cannot tell you the exact date that I left Spokane, but I arrived in Washington, D. C., on May 27th, and registered at the Arlington Hotel—

Q. What year?

A. 1899. I left there on June 2d, and registered on June 3, 1899, at the Touraine Hotel, Boston. I left there on June 9th, 1899, and registered at the Fifth Ave. Hotel, New York, June 10, 1899. I left New York on June 19, 1899, and registered at the Brighton Hotel, Atlantic City, New Jersey, June 19, 1899, the same date I left New York. I left there on July 6th, 1899, for home, via Buffalo, Great Lakes, Duluth, and thence via Northern Pacific through the Yellowstone Park, arriving home about the 22d of July, 1899.

Q. What do you mean by home?

A. Spokane.

Q. During your absence from Spokane on this trip did you see Culbertson? A. I never saw him.

Q. From what data or memorandum do you fix and determine your whereabouts during this period, Mr. Clark?

A. I went to the different hotels since I saw Mr.

(Testimony of Patrick Clark.)

Culbertson's affidavit, and ascertained the facts from the hotel registers.

Q. How did you ascertain the facts from those hotels? A. From the clerks in the hotels.

Q. Independent of that you have knowledge to that effect-- personal knowledge?

A. Yes, sir, I knew I was back there about that time, but I did not know the exact date within a few days.

Q. What day did you get back to Spokane?

A. About the 22d of July.

Q. Now, can you state positively of your own knowledge, Mr. Clark, that in the summer of 1899 between the 25th of May and the 22d of July, you were not in the city of Spokane or the State of Washington, or upon the Pacific coast, at all?

A. No, sir, I was not until I arrived on this side of the Rockies on my way home.

Q. I say, can you state positively of your own knowledge that you were not here at that time?

A. Yes, sir, absolutely so.

Q. Mr. Culbertson states as follows, in response to a question that was put to him (page 18) by Mr. Heyburn:

"Q. In what? A. In the Tiger and Poorman Company to Mr. Sweeny, which was along about the 20th of June--

Q. (Interrupting.) What year? A. 1899. I met Mr. Clark on the street in front of the bank--

Q. (Interrupting.) What bank? A. The old National Bank, in Spokane. He says to me, 'I see you have

(Testimony of Patrick Clark.)

finally sold out,' to which I made the remark, 'Yes, we have sold out'; that I had been up in that country a long time, and that I had had about enough of it, or words to that effect. Q. Did you have any reference at all to the sale or prospect of sale of any interest in the Ella or Missing Link claims or any other claims? A. That subject did not come up, had not been mentioned, and had not been thought of at that time. This conversation was called out owing to the fact of the "Spokesman Review" publishing the account of our sale to Mr. Sweeny." Did you have that conversation at that time or at any other time? A. No, sir.

Q. Now, Mr. Clark, there is a letter put in evidence here marked Defendants' Exhibit No. 11, purporting to be a press copy of a letter written to you August 25th by Frank R. Culbertson. You may examine that, and state if you ever received such a letter, or ever heard of such a letter prior to the time that Mr. Culbertson testified at San Francisco?

A. Is this a verbatim copy of the San Francisco copy?

Q. Yes, that is a copy; a carbon or typewritten copy was used in San Francisco.

A. (After examining exhibit No. 11.) I never received that letter.

Q. Did you ever see that letter, or the letter of which that purports to be a copy, at any time or at any place?

A. No.

Q. It never was received at your office so far as you know? A. So far as I know, never.

(Testimony of Patrick Clark.)

Q. Where were you on the 20th of August, or from the time you arrived here, say from the 22d of July, up until the 13th of October?

A. Oh, I was around town here.

Q. You were in Spokane, were you?

A. Yes, most of the time; I might have gone out to some point.

Q. How frequently, if at all, did you see Mr. Culbertson from that time on until the Ella was sold?

A. I never saw Mr. Culbertson that I can remember of but the once, when he came to my office.

Q. Mr. Clark, assuming that Mr. Culbertson was in Spokane from the 20th of August to the 24th, and that he desired to communicate with you or confer with you on the subject of the Ella and Missing Link claims, was there any reason why he could not have seen you either at your home or your office? A. None that I know of.

Q. You were here during that period?

A. I believe so.

Q. You were on the street every day?

A. Well, more or less.

Q. You live in Spokane, your home is here, and your family live here? A. Yes, sir.

Q. A letter has been put in evidence here, which is marked Defendants' Exhibit No. 12. What do you know about that letter?

A. I know nothing whatever about it.

Q. Have you examined your letters files to ascertain whether such a letter has ever occupied it?

(Testimony of Patrick Clark.)

A. Yes.

Q. Do you find it? A. No.

Q. Have you examined your files of letters received for the purpose of ascertaining whether such a letter as Defendants' Exhibit No. 11 has been received by any other person in your office?

A. Yes, we have searched for it since I came back from San Francisco, and we have not been able to find it.

Q. Another letter is put in evidence marked Defendants' Exhibit No. 13, dated September 9th, and addressed to Charles Eltinge. State what you know about the receipt of that letter, if such a letter was ever received.

A. Not that I know of. Eltinge might have received it, but I have not.

Cross-Examination.

(By Mr. HEYBURN.)

Q. Mr. Clark, do you say you are positive that letter in which Mr. Culbertson requested you to send him the deed was never received at your office? Were you at your office at that time?

A. I was there every day about that time.

Q. Were you there on the 25th, 26th, or 27th of August, 1899?

A. I believe I was there all of the month of August, every day.

Q. Who all were in your office at that time—what persons? A. Myself and Mr. Eltinge.

(Testimony of Patrick Clark.)

Q. No one else?

A. Mr. Kingsbury had a desk there, but was not here at the time.

Q. Where have you looked for the original of that letter?

A. I have looked among my letter files. If I had received a letter of the apparent importance of that, I believe it would be put away; but I have not been able to find it.

Q. Do you swear that letter, the original of that exhibit, never, was in your letter files?

A. Not that I know of.

Q. It might be there, and you not know of it?

A. I don't think it could, because we have searched very carefully.

Q. You testified, if I remember correctly, that you handed Mr. Culbertson this James Clark deed at your office, did you not?

A. Yes, sir.

Q. You were mistaken about that, were you?

A. Perhaps, so. I might have handed it to him, and perhaps it was not acknowledged, or something, and turned over to Eltinge to hunt Jim up and have it done. Perhaps that might have occurred. I know that is the way it occurred in my office at the time, just as I testified before.

Q. Was not that deed drawn at Burke?

A. No, sir.

Q. You swear to that?

A. Yes, sir.

Q. Wasn't it drawn at Burke, and wasn't the name of Mrs. Clark left blank, and you filled it in down here?

(Testimony of Patrick Clark.)

A. I don't remember as to that.

Q. Is not the name of Mrs. Clark in a different handwriting from the body of that deed?

A. I have not seen it.

Q. Have you any recollection of that deed, of the execution or making of it? A. No, sir.

Q. Do you swear the deed was made in Spokane?

A. Well, that is my recollection.

Q. On what do you base that recollection? Did you see the deed made?

A. Because it was executed here, I assume that it was made here.

Q. That is the only ground on which you assume it was made here? A. Yes, that is the only ground.

Q. You did not see the deed executed, did you?

A. No.

Q. Did you ever see the deed?

A. I don't know that I have, except when I handed it to Culbertson.

Q. Did you hand it to Culbertson?

A. I believe so, yes.

Q. You still believe it? A. Yes, I think so.

Q. Notwithstanding, Mr. Eltinge says he sent it to him at Burke?

A. That was later. I handed it to Mr. Culbertson along about the 22d, 23d, or 24th of August, somewhere along there, and I notice Mr. Eltinge says he sent it to to him on the 7th of the following month. There must

(Testimony of Patrick Clark.)

have been some delay on account of the acknowledgment. I presume; I don't know of anything else.

Q. Was the body of that deed written with a pen, or was it typewritten?

A. I could not tell you, sir; I don't remember.

Q. Did Mr. Culbertson write that deed?

A. I don't know.

Q. Why would you hand it to him if it was not executed? A. I don't know why I would.

Q. You don't know who made it out? A. No.

Q. Nor where it was made out? A. No, sir.

Q. Whether it was written with the pen or the typewriter? A. No, sir.

Q. Whether Mr. Culbertson wrote it or not?

A. No, sir.

Q. You still think you handed it to him?

A. I do.

Q. Had it been acknowledged when you handed it to him? A. It appears not.

Q. Can you account for having handed him a deed that had not been acknowledged? A. No.

Q. What date does the deed bear?

A. I don't know; I don't recollect just now.

Q. Was it dated when you handed it to Culbertson?

A. I suppose so; I don't know that it was.

Q. Are you willing to swear that it was?

A. I would not, no. Those are little matters I expected he would look out for.

Q. Why did you hand it to him? What was your

(Testimony of Patrick Clark.)

object in handing him a deed that was not dated, or signed, or acknowledged?

A. I do not know that it was, or that it was not. I did not say that it was, or was not.

Q. Will you fix the date on which you handed it to him? A. No, I am not positive.

Q. Fix it as nearly as you can.

A. About the 23d or the 22d.

Q. Might it have been later than the 23d?

A. I think not.

Q. You say it was either the 22d or 23d?

A. Somewhere along there.

Q. Of August, 1899? A. Yes.

Q. In your office? A. In my office, yes.

Q. In the city of Spokane? A. Yes, sir.

Q. And that is the deed signed by James Clark and wife?

A. I think so; I did not see it after that.

Q. That conveyed the interest to Mr. Culbertson?

A. I did not see it after that. There might have been a new one made out for all I know.

Q. How did it come into your possession?

A. I don't know.

Q. Where did you get that deed?

A. I don't know.

Q. Who requested you to deliver the deed to Mr. Culbertson? A. Mr. Culbertson, himself.

Q. At the time it was delivered?

A. About that time, yes.

(Testimony of Patrick Clark.)

Q. Was it that day? A. I don't remember.

Q. I would like to have you refresh your memory, and say whether or not you gave Culbertson the deed the day you say he requested it? A. I think I did.

Q. You don't remember where you got the deed?

A. No.

Q. Was James Clark here at that time?

A. He was.

Q. In the city of Spokane?

A. He was around here, yes.

Q. On the 22d or 23d of August?

A. I think he was. I don't know whether he was or not.

Q. On the 22d or 23d of August, 1899?

A. I think so.

Q. And he gave you that deed. Did you ask James Clark to make that deed?

A. At the request of Mr. Culbertson.

Q. And he made it the same day that you asked him?

A. I think so, or the day after, perhaps.

Q. Did you witness that deed? A. No, sir.

Q. Did you see it signed or executed? A. No.

Q. Mr. Eltinge was a notary public at that time in your office? A. Yes.

Q. What time of day did you give that deed to Culbertson? A. I don't know.

Q. Was it during the daytime?

A. I think so; yes.

Q. Who was present?

(Testimony of Patrick Clark.)

A. Nobody but Mr. Culbertson.

Q. Mr. Eltinge was not there?

A. No, sir; he was out in the other room.

Q. Did Mr. Eltinge hand you that deed?

A. Not that I know of.

Q. You don't know where you got it?

A. No, sir.

Q. Was James Clark in your office that day?

A. I don't know.

Q. You did not see the deed executed by any of the parties?

A. No, sir.

Q. It could not have been later than the 23d when you delivered it to him, could it?

A. No, I think not.

Q. You didn't notice the date of that deed?

A. No, I did not read it.

Q. Is it not a fact, Mr. Clark, that that deed was drawn at Burke and sent down here to be executed, with the name of Mrs. Clark left in blank, with the request that it be filled in, and that the letter that transmitted it was the letter that is in evidence here?

A. I stated before I did not know that it was, or when it was made out.

Q. If it was drawn at Burke on the 25th of August, then you would be mistaken about having handed it to Culbertson, would you not?

A. Yes, sir.

(Witness excused.)

Mr. STOLL.—We now offer in evidence the affidavit of Charles Sweeny, signed and sworn to by him on the

(Testimony of Patrick Clark.)

13th day of September, 1901, before A. L. Richardson, clerk, and filed September 13, 1901, in the suit entitled Patrick Clark, Benjamin C. Kingsbury, James Clark, and James P. Harvey, Complainants, vs. Buffalo Hump Mining Company et al., Defendants, in this court, and in this case, and we will ask leave to substitute a copy.

Mr. HEYBURN.—I shall object to the substitution of a copy because there is no consent here that that paper be withdrawn from the files. It is an original file in this court, in this case, and it was sent here for the purpose of the examiner, and not to be taken possession of by either litigant, and I do not think the examiner could properly, or would at all, allow it to be taken into the possession of either party. I object further, because it is immaterial, incompetent and irrelevant.

Mr. STOLL.—We offer the original paper. It is a part of the files of the case. We can always offer the files of a case in evidence. If there is objection to it on any technical ground, we will propose to substitute a copy.

The EXAMINER.—So far as the original files are concerned, they are in my possession as examiner, sent to me by the Clerk of the Court. I am responsible for them, but I suppose that that is a part of the files. I would not be willing to surrender these papers, and put them into the possession of either party.

Mr. STOLL.—They can be put in the possession of the stenographer to be copied.

(Testimony of Patrick Clark.)

The EXAMINER.—These original files having come to my possession from the clerk, I should want the record to show any disposition that is made of them, so that I would not be made responsible for any taking of them from the records, or anything of that kind; but the parties can use the record for the full purpose of making out their cases, and that is what the clerk put them in my possession for. Beyond that I have no control over them.

Mr. STOLL.—Do you refuse permission, Mr. Heyburn, of the stenographer to make a copy?

Mr. HEYBURN.—Oh, no; I do not object to his making a copy, but I want the original paper always to remain where we can get at it.

Mr. STOLL.—Very well; I would like to have the stenographer make a copy of that, and put it in the record.

(Said document was thereupon by the examiner given into the possession of the stenographer to make a copy thereof, which copy is as follows:)

*In the Circuit Court of the United States, for the District of
Idaho, Northern Division.*

PATRICK CLARK, BENJAMIN C.
KINGSBURY, JAMES CLARK, and
JAMES P. HARVEY,
Complainants,
vs.

BUFFALO HUMP MINING COM-
PANY (a Corporation Organized Un-
der the Laws of the State of New
York), and EMPIRE STATE-IDAHO
MINING & DEVELOPING COM-
PANY (a Corporation Organized Un-
der the Laws of the State of New
York,
Defendants.)

No. ———.

Affidavit of Charles Sweeny.

State of Idaho, }
County of Ada. } ss.

Charles Sweeny, being first duly sworn, on his oath de-
poses and says:

That he is a citizen of the United States over the age
of fifty-two years. That he is the same Charles Sweeny
referred to in the bill of complaint in the above-entitled
action; that he has read the said bill of complaint and
the affidavits filed on behalf of the said complainants in
their application for the appointment of a receiver and

for the granting of an injunction in said case. That he is personally acquainted with the affiants, and all of them. Affiant further says that he has read the affidavit of Patrick Clark, filed in said cause on said application for an injunction and receiver. That the statements therein made by the said Clark as to his knowledge and information as to the condition of the Tiger and Poorman mine and of the Ella and Missing Link mines, at all times prior to the sale of the said Ella and Missing Link claims by said Clark to the defendants the Buffalo Hump Mining Company, this affiant believes to be untrue. That said Clark had for many years the personal management and control of the work in all of said mining claims, and because of his experience both as a practical miner and as manager of a mine and as a manipulator of mining enterprises and deals, availed himself of all knowledge that could be had as to the developments in said mining claims. That at no time were the said mining claims, or the workings or developments therein ever closed against the said Clark, but on the contrary, the said shafts, tunnels, drifts, and excavations on all of the said mining claims were at all times open to the said Clark so that he might come and go freely and make any and all examinations of the same that he desired to do. That at the time of the purchase of the said Ella and Missing Link lode claims the said Clark gave this affiant to understand that he was fully acquainted with the said mining claims and the developments thereon, and neither asked this affiant as to such developments, or expressed any desire to obtain any further information or make any examination of

the said mining claims. That this affiant was not the moving party in the purchase of the said interest in the said Ella and Missing Link lode claims, nor did this affiant suggest or fix any price for said interest; that said price was fixed by the said Clark, and, it being satisfactory to this affiant, as the representative of the said Buffalo Hump Mining Company, this affiant merely accepted the offer that was made him. That no representations in regard to the value of the claims were made, nor was there any discussion as to the value of the claims, at the time of the purchase of the interest of the complainants, nor at any time prior thereto, in which this affiant or any other person, so far as this affiant is advised, made any representations to said Clark, or to any person representing the said complainants, or any of them, as to any ore bodies that had been found or known to exist in or within the said Ella or Missing Link lode claims, for the reason that the question as to the existence of such ore bodies was not at any time under consideration or discussed by either or any of the parties to the said deal.

This affiant further says that such exploration as had been made at the instance of this affiant as general manager of the Buffalo Hump Mining Company, prior to the execution and delivery of the deed by the complainants to said company, were at no time secret, nor was any knowledge withheld from any person entitled to the same; but had any of the said complainants at any time requested information as to the said developments, it would have been cheerfully given them. This affiant further says that such developments as were made by ex-

cavations or diamond drill for the purpose of prospecting the Tiger and Poorman and neighboring properties, were made openly and without any secrecy, or the withholding of any knowledge from any person who might be considered entitled to receive such knowledge, upon their request for the same. That this affiant believes that the said Clark was fully advised as to the explorations and prospecting that had been engaged in within the Tiger and Poorman lode claims, and of the object of such explorations. This affiant says that it is not true, as stated in the affidavit of said Clark, that this affiant ever made any statements to the said Clark or to any person, that the Ella and Missing Link claims were without value, or made any statements as to the value of the said Ella and Missing Link lode claims, as pretended and set forth in the affidavit of the said Clark. This affiant further says that it is not true that the said Clark relied upon any statements made by this affiant as to the value of the Ella and Missing Link lode claims.

This affiant further says that the price paid to the complainants for the Ella and Missing Link lode claims was a full and adequate price, and represented the full value of said claims; that the said Ella and Missing Link lode claims had no value except to the owner of the Tiger-Poorman claims, through whom they might be worked. That at the time of the purchase of the said Ella and Missing Link lode claims by the Buffalo Hump Mining Company, there was nothing known to this affiant or any other person, so far as this affiant knows, that the Ella and Missing Link lode claims had any value in excess of

the price paid for the same, or that any considerable ore bodies existed therein. It is not true that this affiant stated to the said Clark at any time that he had purchased the interest of the said F. R. Culbertson in the said claims for the sum of five hundred dollars; that the fact is that this affiant did not, nor did any person, purchase the interest of the said Culbertson in said claims until long after the complainants sold their undivided four-fifths interest in the said claims. That the allegation contained on page two of the affidavit of the said Clark, wherein Clark alleges that this affiant stated that the Ella claim had no value, that it was not worth fifteen dollars, is absolutely untrue; that it is not true as alleged in said affidavit, that this affiant replied to the inquiry of said Clark, that the Ella claim would be of some value for forming the basis of a new corporation that this affiant was about to float, or would make a bog showing of surface ground, or that while the said claims were of no value as mining claims, nevertheless they would be of some value in the furtherance of the new proposition, or in effecting the organization thereof. This affiant says that he had no intention of, nor was he considering the formation of a new corporation in connection with the said mining properties referred to in said affidavit, nor was such corporation ever formed. That the reason the affiant purchased the said mining claims for the Buffalo Hump Mining Company was that the Buffalo Hump Mining Company was then the owner of the Tiger and Poorman claims and of an undivided interest in the O'Neil lode claim on the east of the said Ella and Missing Link lode claims, and desired

to own the said Ella and Missing Link lode claims that they might pass through to the said O'Neil ground, when it should be desirable to work the same, having then in contemplation the purchase of the outstanding interest in the said O'Neil claim.

Affiant further says that he did not buy or negotiate for the interest of the said F. R. Culbertson in the said claims until after he had purchased the undivided four-fifths interest of the complainants therein. Affiant further says that he never suppressed any facts or made any false statements in regard to the said Ella or Missing Lode claims to the said Clark or any other person at any time.

Affiant further says that he is the general manager of the Empire State-Idaho Mining and Developing Company, the present owner of the Ella and Missing Link lode claims, as well as of the Tiger and Poorman lode claims. It is not true that the ore is being mined from the Ella and Missing Link lode claims in such a manner as to render it impossible or inconvenient to ascertain at all times the amount and value of the ore extracted from the ground claimed by the complainants.

This affiant says that it is not true, as alleged in the fourth paragraph of the complaint that any of the complainants have been or were denied access to the ground in controversy, and this defendant further says that at no time since the purchase of the said claims has there ever been mined from the said claims ores in excess of one hundred and fifty tons per day, and that the statement contained on the fourth page of the affidavit of the said

Clark that it is quite within the power of the defendants to extract five hundred tons of ore per day from the Ella lode claim, is an absurd and wild statement, containing no element of truth. That it would be impossible to extract to exceed two hundred tons of ore per day from the said Ella ground, in any ore bodies that have yet been discovered therein since the purchase of the said claims by these defendants.

This affiant says that there is no reason for the appointment of a receiver of said property. That to appoint a receiver therefor would simply result in shutting down the property. That the defendants have no desire to, and will not remove or destroy any marks or monuments, or obliterate anything, the existence of which are necessary for the establishment of any and all facts pertaining to the purchase, operation, or working of the said mines, or any part of them. It is not true that defendant is filling up the stopes with waste or with any other material, or contemplates, or will do so. That the quantity of ores that have been and are being extracted from said Ella and Missing Link claims can be ascertained by the measurement of the stopes from which said ores are being taken, should it be desirable so to do.

Affiant further says that the ores being mined from the said Ella and Missing Link lode claims are of about twelve per cent lead and six and one-half oz. of silver, and make a concentrate of about six tons into one; that the said concentrates have a value of about fifty-six per cent of lead and 25 ounces silver.

Answering the affidavit of Joseph MacDonald this affiant says that the said Joseph MacDonald was never at any time in the employ of either of the defendants, in any capacity whatsoever. That it is not true, as stated in the affidavit of the said MacDonald that he was the advisory engineer of the Consolidated Tiger and Poorman Mining Company during this affiant's connection with the said Consolidated Tiger and Poorman Mining Company, or that he was ever the advisory engineer of the Buffalo Hump Mining Company. That it is not true that the said MacDonald ever advised this affiant, as Manager of the Buffalo Hump Mining Company, or at all, to put in diamond drill holes, or that because of any advice of the said MacDonald to any person, the Buffalo Hump Mining Company, under the management of this affiant or of F. R. Culbertson, or at all, employed one C. W. Butler, to prosecute prospecting in that direction, or employed C. W. Butler at all. It is not true that the said Buffalo Hump Mining Company, or this affiant, or any person having authority, or acting for the Buffalo Hump Mining Company, or this affiant, because of the advice of the said MacDonald, made any excavations, or did any work or any explorations in or about the Ella lode claim or the Missing Link lode claims, or hired any person to operate a diamond drill or prosecute prospecting by a diamond drill or otherwise in any direction. That it is not true that because of any advice or suggestion on the part of the said MacDonald, the said C. W. Butler, or any other person, put any number of drill holes from the abandoned drift, or any drift in the twelve hundred foot

level, or any level, or any level into the Ella lode mining claim in a southerly direction, or in any direction, or in each instance struck a large body of ore in what is now known or what was ever known as the Ella drift proper nor were there any diamond drill holes ever started in the Ella ground. It is not true so far as this affiant is informed and believes, that the said MacDonald was ever present or saw any cores from the said diamond drill holes, or had samples of the same assayed; that it is not true that there was fully five feet of clean ore in any diamond drill hole, or three feet in another, or that any diamond drill hole averaged from three to five feet of clean ore in the Ella ground. This affiant says that there was never but one diamond drill hole bored into the Ella claim and Missing Link claim by either of the defendants or by this affiant, or by their direction, and that the said hole did not start within the Ella ground, and only went a short distance in from the easterly side of the Ella and Missing Link ground, and that there was found in said drill hole only a small ledge of concentrating ore, the value of which could not be ascertained with any degree of certainty, and was not ascertained by this affiant until months afterwards, and that upon such ascertainment, it did not prove to be a large or valuable body of ore. That at the time the said diamond drill hole was made, which penetrated the said Ella and Missing Link lode claim as aforesaid, it was not the intention of the defendant or of any person representing it, that the said diamond drill holes should be so made or directed as to penetrate either the Ella or Missing Link ground, but it was the intention

of the defendant, the then owner of the undivided interest in the O'Neil lode claim, to start the said drill hole from the end of the twelve hundred foot level within the O'Neil ground and to continue the said diamond drill hole entirely within the said O'Neil claim, crosscutting the same. That the cause of the carelessness of the man having charge of the said drill hole, the drill was not started in the right direction and consequently slightly penetrated the said Ella and Missing Link lode claims, and the defendant, the Buffalo Hump Mining Company, nor any of the defendants, nor its representatives ever knew that the said diamond drill hole had penetrated the said Ella and Missing Link lode claims until after the said defendant had purchased the Ella and Missing Link claims and had extended its drifts and excavations to the point where said diamond drill hole had so penetrated the said Ella and Missing Link lode claims. This affiant says that the alleged and pretended facts and statements set out in the affidavit of the said MacDonald, which he says were all known to this affiant and to F. R. Culbertson, prior to October 1, 1899, are false allegations and untrue in every particular.

This affiant says that he does not know what the intention of the said MacDonald may have been prior to or for several months prior to August, 1899, in regard to procuring a lease or bond on the said Ella claim from said Clark and his co-owners, or as to whether or not he notified Culbertson of his pretended intentions, in that regard, or as to what may have passed between the said

Culbertson and the said MacDonald, except as said Culbertson may have stated same to this affiant.

This affiant denies that in the month of September 1899, he came to the said MacDonald and stated to him that he ought not to procure a lease on the said claim from said Clark, but that he should stand in with this affiant and this affiant would procure him a large amount of stock in a new company that he was about to form for the purpose of purchasing that and other mines in the vicinity, or that the said MacDonald could make a great deal more money by standing in with this affiant than by taking a lease on the said claims from the said Clark and his co-owners; or that at any time this affiant asked the said MacDonald not to mention anything about a strike of ore to Patrick Clark or his co-owners; or that thereafter and prior to October 13, 1899, or at any time the Buffalo Hump Mining Company run a crosscut near the Ella west line and struck any ore body in the Ella claim, as alleged in the said affidavit of MacDonald, or had drifted more than sixty feet upon any such ore body prior to October 13 1899, or that in said pretended drift or any drift there had been encountered any body of clean shipping ore, averaging from three to five feet in width from the said crosscut to the breast of said drift, so as alleged in the said affidavit of said MacDonald.

This affiant says on information and belief that it is not true that said MacDonald was in the drift in the Ella claim on the twelve hundred foot level five or six days prior to October 13, 1899. Says that it is not true

that there was at that time, or at any time, from eighty to one hundred and fifty feet of clean shipping ore in said drift. This affiant says that the statement contained in the last paragraph of the affidavit of the said MacDonald is not true. That this affiant does not believe that the said MacDonald ever at any time considered the Ella and Missing Link lode claims to be worth a million dollars, or to be worth any sum over and above the price paid to the complainants for the same. But this affiant believes that the said MacDonald in making the affidavit made and filed by him herein, was actuated by spite and malice in doing so. That the said MacDonald, during the year 1899, sought to enter the employment of the companies represented by this affiant, and this affiant did consider the propriety of making an arrangement with the said MacDonald for entering the employment of the said companies, but because of certain statements made by the said MacDonald which came to the knowledge of this affiant, this affiant concluded that the said MacDonald was not reliable in business transactions and could not be believed, either in the ordinary course of business, or under oath, and therefore broke off all negotiations with the said MacDonald looking toward his employment by any companies represented by this affiant; and affiant believes that all of the statements made by the said MacDonald in his affidavit filed herein, wherein he claims to have had any conversation with this affiant, or wherein he claims to have seen any cores from diamond drill holes, or to have seen any ore bodies in the Ella

or Missing Link lode claims, or any statements that he has made in regard to said claims, are wilfully and maliciously false, and made for the sole purpose of harassing and injuring the defendants and this affiant.

Answering the affidavit of J. C. Ralston, this affiant says that if the said Ralston made the surveys which he alleges to have made in his affidavit, he made same by surreptitiously and secretly sneaking into the mine under false pretenses and by means of disguises; that by such acts he obtained such alleged information and the opportunities of making measurements and surveys which he could have obtained in a legitimate way by a courteous request to be permitted to inspect the said mines, but that evidently preferred to do in such surreptitious manner the things that he claims to have done. That when said Ralston prophesies as to the manner in which the stopes will be filled, or refilled with waste, or as to the effect thereof, that he is guessing; that he knows nothing of the manner or method by which the said mine are being operated and worked.

This affiant says that the value of the ore extracted from the Ella and Missing Link lode claims does not exceed \$25,000.00

This affiant further says that in all of his transactions with the complainants, whether personal or on behalf of either of the defendants, that this affiant has acted in the utmost good faith and candor; that he has not attempted at any time to mislead the complainants or any of them, or withhold any facts as to the development of said ore bodies, or the value of the same in the Ella

and Missing Link lode claims. That this affiant purchased the same for the defendant, the Buffalo Hump Mining Company, and paid complainants therefor their own price, and paid complainants for the said Ella and Missing Link lode claims at the same rate as he afterward paid the said Culbertson for his interest therein. That it is not true that he, or the defendant Company, paid the said Culbertson any price for his said interest in the said claims in excess of that paid to each of the complainants. That the whole price paid for the said claims was five thousand dollars; that in the judgment of this affiant these claims at that time were not worth any more than the sum paid, and that they are not now worth any more to any other Company or person. That said claims have no value or would have no value, except to persons situated as the owners of the Tiger and Poorman mines are situated. That the ore bodies that are being and have been worked, and will be worked in the future, by the defendant, the Empire State-Idaho Mining & Developing Company, could not be made available to work to a profit by anyone except the defendants. And this affiant denies positively each and every allegation, intimation, charge or insinuation or misrepresentation, fraud or unfair conduct or speech charged against him in connection with the purchase of the Ella and Missing Link lode claims, whether same may be charged in the bill of complaint filed in this action, or in any affidavit or statement filed in support of the motion for injunction or receiver.

Affiant further says that the matters and things stated

in this affidavit that were done or performed by the employees of the defendant corporation, or by persons acting or working under the direction of this affiant, as general manager of such corporation, are based upon the statements made to this affiant, to those acting under his direction in carrying out his instructions as to the doing and the manner of doing such things. That as general manager of the corporation defendant, it is not possible for affiant to see or personally know of the doing of all of the acts and things concerning the working and operating of the property of the defendants, but that affiant has given, and at all times does give careful attention to the giving of instructions and to the manner in which they are carried out and all of the statements herein contained as to the matters and things that have been done in connection with the working, developing and operating of the mining claims of the defendant, have been carefully investigated by this affiant and found by him to be true.

CHARLES SWEENEY.

Subscribed and sworn to before me, this 13th day of September, 1901.

A. L. RICHARDSON,
Clerk.

J. C. RALSTON, recalled on behalf of plaintiffs, testified as follows:

Direct Examination.

(By Mr. STOLL.)

Mr. Ralston, referring to the map which was put in by the other side, showing a longitudinal section, showing the Clark stopes in connection with the longitudinal section, you have seen that map have you?

A. Yes, sir.

Q. I will ask you to state whether it is correct.

A. I judge it to be correct, excepting that it did not show the two stopes in the 800 in correct outline.

Q. That is what I mean. In what respect were those stopes not accurately shown?

A. The stopes are shown in a blurred form of a lead pencil drawing, a blue pencil, as I recollect it, and show no specific outlines; but, in a rough way, possibly, their general or approximate location.

Q. The stope in the east, in the Ella ground, was that correctly shown upon their map, pretending to extend into the Ella or Missing Link?

A. It could not be correctly shown if shown as I say it was.

Q. Was it correctly shown upon their map?

A. No, sir.

Q. Have you made a survey and actual measurement of the premises, so that you can give us from your own knowledge a correct plat or map, showing a longitudinal section?

A. I have.

(Testimony of J. C. Ralston.)

Q. Have you that prepared?

A. Yes, sir; this is the map.

Q. When did you make it?

A. I finished it a couple of days ago.

Q. When did you make the surveys?

A. Last Friday, I think it was.

Q. Where?

A. On the 800 level of the Tiger-Poorman mine of Burke, Idaho.

Mr. STOLL.—We offer this map in evidence.

(Same was admitted without objection, and marked Plaintiffs' Exhibit, No. 43.)

Q. Who accompanied you to Burke and assisted you during your examination of those stopes?

A. Mr. James Harvey.

Q. One of the complainants in this case?

A. Yes, sir.

Q. Who else, representing the defendants, accompanied you through the works?

A. Mr. Smith and Mr. Cartwright, on behalf of the Tiger-Poorman people.

Q. How did you get access to the 800 stopes?

A. By going down the main shaft of the Tiger-Poorman to the 1,100, and easterly on the 1,100 to the raise up into the 800.

Q. You went up the raise into the 800?

A. Yes, sir.

Q. What is the condition of the floor of the 800?

A. It is filled generally with debris and falling ma-

(Testimony of J. C. Ralston.)

terial, which accumulates generally and naturally in old workings.

Q. Did you see any indication there of a trench having been dug, or were you shown where a trench had been dug to the floor of that opening on the 800?

A. No, sir, we saw no indications, nor were we shown any trenches.

Q. What assistance was given you by Mr. Cartwright and Mr. Smith, representing the defendants, when you went through there, in the shape of pointing out to you the ore bodies which they had found there?

A. They offered no assistance; they merely accompanied us, making notes occasionally, as we ourselves sometimes made notes. Sometimes they made notes when we did, and sometimes they did not.

Q. Did you make a drawing of the roof, of what they have seen fit here to call the Clark stopes, showing accurately the ore seam, its size and extent?

A. Yes, sir.

Q. Have you the drawing in your hand at this time?

A. Yes sir, this is the drawing, on a scale of four feet to the inch, showing the back or roof of the Clark stope.

Q. Does that correctly show the size of the ore seam?

A. Yes, sir.

Q. From actual measurements made by you, at the time? A. Yes, sir.

Q. As it continues the entire length of that roof?

A. Yes, sir.

Mr. STOLL.—We offer that drawing in evidence.

(Testimony of J. C. Ralston.)

Mr. HEYBURN.—We object to it as incompetent and not proven.

(Said drawing is marked Plaintiffs' Exhibit No. 44.)

Q. Did you also make a drawing of the west face of the Clark stopes?

A. Yes, I have the drawing here on a scale of four feet to the inch, showing the west face of the Clark stope from the roof or back thereof downward to the 800, but omitting part of the vein between the first and second floors. That omission is made because the vein could not be seen at that point. Above that, however, the vein was seen, and this drawing correctly represents what we saw and measured in that face.

Q. How is the ore seam indicated on that drawing?

A. By a dark red color enclosed in black lines running down through a background of yellow.

Q. What does the yellow streak through there represent?

A. The yellow streak represents the vein, or the fault plane, rather, in which the ore occurs, while the green on each side represents the enclosing walls.

Q. Is the same true of the drawing which is marked Plaintiffs' Exhibit No. 44, of which you testified just a moment since? A. Yes, sir.

Mr. STOLL.—We offer this drawing in evidence.

(The same is marked Plaintiffs' Exhibit No. 45.)

Q. Did you also make a drawing of the east face of the Clark stopes? A. Yes, sir.

Q. Have you the drawing?

(Testimony of J. C. Ralston.)

A. I have the drawing here, on a scale of four feet to the inch, showing the east face of the Clark stope for its entire distance, from the 800 level to its back. The same system of colors are used in this drawing that has been used in the other drawings of this stope.

Q. You now have the east face, the west face, and the roof of the entire stope? A. Yes, sir.

Mr. STOLL.—We offer this drawing in evidence.

(Said drawing is marked Plaintiffs' Exhibit No. 46.)

Q. Who made the measurements from which you have made this drawing?

A. Mr. Harvey and myself.

Q. You are able to testify that each of those drawings correctly represents the size of the ore seam which they purport to represent? A. Yes, sir.

Q. State, now, what the width of the ore-bearing seam on exhibit 46 is in the east face?

A. Beginning at the back of the roof and going downward on that seam, I have a measurement first of five inches, another one of three inches, another one of five inches, another one of two inches, another one of eight inches, another one of six inches, another one of two inches, another one of seven inches, another one of two inches, another one of five inches, and another of four inches.

Q. Referring to exhibit No. 45, what does that represent? A. This is the west face.

Q. State the width of the ore seam there.

A. Beginning at the back or roof and going down-

(Testimony of J. C. Ralston.)

ward, I have the first measurement recorded of five inches, another one of eighteen inches, another of six inches, another of five inches, and another of four inches.

Q. Referring, now, to the roof of the Clark stope, exhibit No. 44, state what you found the width of the ore seam there to be.

A. Beginning at the east end of the roof, I have a measurement of four inches, another of six inches, another of four inches, another of five inches, another of ten inches, one point at which there is no width of ore or quartz, another of five inches, and another six inches.

Q. The floor of that drift you have stated, I believe, was covered with debris and other material, making it impracticable and impossible to make an examination of it? A. Yes, sir, it was covered, as you say.

Q. And you saw no indications that anybody else had ever examined it? A. I saw none.

Q. And you were not told by any of the persons that accompanied you that an examination had ever been made of it? A. No, sir.

Q. At the point where the raise enters the Clark stope from the the 1,100 how much ore was there?

A. I don't remember, now. I will have to refer to notes to state that.

Q. Get your notes. A. I haven't them here.

Q. Where are they?

A. They are at my office.

Q. Please send for them. I refer now to where the raise enters the 800.

(Testimony of J. C. Ralston.)

A. Where the raise enters the 800?

Q. Yes.

A. Oh, I understood you to say at the beginning of the 1,100.

Q. (The preceding questions were read.) Well, that was my mistake.

A. On the west side of that raise, the west face of it, immediately under the floor of the 800, there is a seam of quartz and ore, possibly about two inches wide.

Q. How about the other face of it?

A. There is no quartz or ore showing in the east face of that raise.

Q. In what territory is the east side of that raise?

A. It is very close to end line of the Poorman-Ella.

Q. From a measurement, what do you state as to whether it is within the Ella or within the Poorman?

Mr. HEYBURN.—The east side? Do you mean to say?

Mr. STOLL.—The west side.

A. Oh, the west side within the Poorman ground, and the east side in the Ella ground.

Q. Now, going downward in that raise, how do you find the ore?

A. I find it for some distance downward very narrow.

Q. How narrow?

A. Oh, at its narrowest place on the west side there I think it was about an inch and a half, and slightly, in a general way, increasing downward from the 800, until

(Testimony of J. C. Ralston.)

I think, perhaps, about the 16th floor it got to be some reasonable width.

Q. Have you a drawing showing a longitudinal section of that raise? A. Yes, sir.

Q. Show it to me.

A. It is this one (referring to Plaintiffs' Exhibit No. 43).

Q. No, I mean a small drawing.

A. I didn't make that. This is a longitudinal drawing, which includes the raise with the stopes.

Q. Mr. Ralston, you heard the testimony of some of the witnesses for the defendants in this case, stating that there was merchantable ore in the 800 in what we call the Clark stopes. What do you say about that?

A. I saw very little merchantable ore in the Clark stopes.

Q. Did you take samples from those different ore seams of which you have given us the drawings?

A. Yes, sir.

Q. Have you had them assayed? A. No, sir.

Q. Have you them in court?

A. I have them here.

Q. Referring to the Complainants' Exhibit No. 2, which is a drawing of the 1,200: Assuming this to be upon the 800, how far a distance would have to be driven through barren rock to reach what is called the Clark stope from the east workings in the Poorman?

A. About 285 to 290 feet.

Q. What would be the cost of that?

(Testimony of J. C. Ralston.)

A. Well, I presume that would cost, perhaps, \$12 a foot to run. That would be \$3,480.

Q. Did you measure and calculate the cubical contents of the void in the so-called Clark stope on the 800?

A. Yes, sir.

Q. What does it amount to in tons?

A. I estimated it to contain 1,800 tons.

Q. That is being how high?

A. To a distance of—

Q. Well that includes the 600?

A. That is the entire shoot from the eight up to the six.

Q. Includes the six, doesn't it? A. Yes.

Q. Did you estimate the value of that ore?

A. Yes.

Q. What is it?

A. We assumed it to be fifteen per cent ore.

Q. What is the result as to value?

A. We estimated that in that shoot there would be approximately 270 tons of fifteen per cent ore, which, at seven ounces of silver to the ton, would give a total value to the shoot of \$4,068.90.

Q. (Cross.) Of ore in the Clark stope?

A. In the Clark shoot from the eight up to the six.

Q. The cost of running the drift from the east workings of the Poorman through that barren ground would be, you said, how much, to reach this ore?

A. Three thousand four hundred and thirty-two dollars.

(Testimony of J. C. Ralston.)

Q. And would that drift have to be run on each level from the Poorman workings to tap that ore body in going downward? A. Necessarily.

Q. That is, if it was worked through the Poorman mine? A. Yes, sir.

Q. What do you say then as to whether, assuming the values to be as you found them in the Clark stopes, it would pay to work those ores?

A. It resolves itself into a mathematical calculation in which it is very apparent that it would not pay. For instance, there are, as I said before, I estimated there would be 1,800 tons of material to be taken down upon that shoot, to mine, which would cost probably three dollars a ton. That would be \$5,400. Added to that the cost of running 286 feet of tunnel at twelve dollars a foot, being \$3,432, or a total of \$8,832, representing the total cost of extraction, out of which we take 270 tons of ore, that we estimate fifteen per cent ore, netting \$4,068.90. The difference between those two would leave a balance of \$4,763, in debt, after having pursued that operation.

Q. If the values and the size of the ore body did not increase as you went downward into the earth, would those same conditions continue to exist?

A. Yes, sir.

Q. Mr. Ralston, you say you have some samples here which you and Mr. Harvey took from the faces and roof of the Clark stopes? A. I have.

Q. Please produce them.

(Testimony of J. C. Ralston.)

Mr. HEYBURN.—I would like to have the witness identify the Clark stope; you mean the most westerly of the stopes on the 800?

A. The most westerly—the one that lies approximately in the middle of the Ella ground.

Q. State where you got those samples you just produced, what they are, and number and identify them.

A. These are the samples taken from the faces of the Ella or Clark stope. Sample No. 3 is a sample taken from the east face of the second floor of the Clark stope. This sample was broken from the full width of slab or vein or quartz and ore; in other words it represents the full width of the vein; broken from the vein as it stood; between my fingers (holding up sample) representing the width of the quartz and the ore.

Mr. STOLL.—We offer that sample in evidence.

(Same is marked Plaintiffs' Exhibit No. 47.)

A. (Continued.) Sample No. 2, at the back or roof over the ladder in the Clark stope of the 800 foot level above the 4th floor. The sample shows the full width of vein of ore and quartz.

Mr. STOLL.—We offer this sample in evidence.

(Same is marked Plaintiffs' Exhibit No. 48.)

A. (Continued.) Sample No. 1 from face of third floor of the Clark stope, 800 foot level, about two inches wide, being the total width of ore, just the same as those others, though this one has become broken since.

Mr. STOLL.—We offer this sample in evidence.

(Testimony of J. C. Ralston.)

(Same is marked Plaintiffs' Exhibit No. 49.)

A. (Continued.) Sample No. 4 represents the full width of ore seam on the west side of the raise from the 1,100, where the raise breaks into the 800 foot level.

Q. What is the size of that sample?

A. That is the width of the ore as it stands, perhaps, an inch and a half.

Mr. STOLL.—We offer this sample in evidence.

(Same is marked Plaintiffs' Exhibit No. 50.)

Q. You got those samples yourself, did you, Mr. Ralston?

A. Mr. Harvey and myself, yes, sir.

Q. Did you take fair samples with a view to being as fair to the mine as possible?

A. Those are fairly representative samples, I think, yes, sir. Certainly we could not take any more than what is here when we have taken the full width of the vein.

Q. Now, referring to the other stope that you found on the 800 level east of the stope, where you got those samples, what did you find there?

A. We did not pay as much attention to the stope in the O'Neil ground as we did in the other, because, while we went through it, it was not on the ground in question, and therefore made no definite notes.

Q. What did you find in the east face of that?

A. In the east face of the east stope?

Q. The west face of the east stope.

A. The west face? Well, we found that that face had been lately broken. We found a moderately new

(Testimony of J. C. Ralston.)

clean face, as against the other parts of the stope, which were not new and not clean

Q. How much has been knocked off of the face there?

A. Assuming that the stope stood vertically as it naturally would, with the timbers, there must be, perhaps, at least, six feet of new material taken out.

Q. Where was the material that was knocked down out of that stope?

A. It had fallen and rolled down below.

Q. Was it there in the stope?

A. Yes, sir; apparently so.

Q. What did it consist of?

A. Broken down vein stuff and some talc.

Q. How much ore did you find in the face in place?

A. My recollection is that there were about six inches of ore there.

Q. What character of ore?

A. Much the same as those samples.

Q. What was there in the other face of it, the east?

A. I think, as I recollect it, that face showed about an average there of something like the other, and depending wholly on recollection. We made no definite notes of it.

Q. What was the roof like?

A. The roof did not impress me much differently than the roof in the Clark stope.

Q. What was the condition of the floor in that stope?

A. On the 800?

Q. Yes, the east stope on the O'Neil ground.

(Testimony of J. C. Ralston.)

A. The floor was the same as elsewhere, namely, filled with debris, accumulated material, which one would naturally expect to find after a stope had laid idle for several years.

Q. Did you make a survey and measurement for the purpose of determining whether that east stope was within the Ella and Missing Link ground?

A. Yes, sir.

Q. What do you say from your measurement as to where it is?

A. In that measurement I found that the stope proper is in the O'Neil ground.

Q. How far is the west face of it from the Missing Link line?

A. The west fact of this newly sloughed or broken down, torn down ground, of which I spoke, probably, falls without the O'Neil and within the Missing Link two or three feet.

Q. And about six feet had been broken down in the west face, I understand, you to say?

A. Yes; somewhere about that; six feet possibly in height.

Q. Was the floor of that east slope, the No. 1 and 2 floors of that east stope, in the Ella or Missing Link ground at all? A. No.

Q. How far from the line would it be?

A. In the vicinity of 17 feet.

Q. Seventeen feet into the O'Neil, I understand you to say? A. Yes, sir.

(Testimony of J. C. Ralston.)

Q. Mr. Ralston, what connected those two stopes?

A. The 800 main drift.

Q. What was in that drift in the shape of ore?

A. No ore could be seen through the drift as I recollect it, and I think it was largely, in fact almost wholly, the roof was wholly covered with stulls nailed down, or at least we asked if they were nailed, and I think my recollection is they said they were all nailed; at any rate, we didn't try it.

Q. No indication of ore there anywhere?

A. It was covered up, we could see no indication of any vein.

Q. Referring to Exhibit No. 18, put in by the defendants, have you examined that mass of rock over there?

A. I have looked at it.

Q. Did you hear the testimony of the witnesses as to where that came from?

A. Yes, sir.

Q. Please state the facts, if you have any explanation to make concerning that?

A. That piece of ore apparently, as the witnesses have stated, purports to be a piece of ore broken from the southwest corner of the intersection of the intermediate drift and the crosscut on the 1,200. On one occasion when I entered that mine I remember very distinctly of making a note of the appearance of this particular corner, and finding at that time a good deal of ore standing there. I found that corner in much the same general appearance as the general vicinity of those workings. On a later date when the same vicinity was

(Testimony of J. C. Ralston.)

visited by myself and a party consisting of Mr. Harvey and two others, we found that that corner had been broken down, a triangular piece had been broken off the corner. So that much of the good ore which was seen there originally was necessarily not to be found. And I imagine this piece in question now is the—

Mr. HEYBURN.—That triangle?

A. I don't say that triangle. I say I imagine it possibly came from that corner behind the triangle, if anything. I don't know where it came from.

Q. On any of your visits there did you take a photograph of what you found?

A. Yes, sir; I took a number of photographs.

Q. State where you photographed and what you photographed, and when you did it, and who was with you?

A. Those photographs were taken on September 20th or 21st of last year on the first occasion of my going up to the mine.

Q. Who were with you?

A. Mr. Harvey, Mr. E. C. MacDonald, Joe Doland, and one or two others. Amongst other things which was done on that trip some photographs were taken.

Q. What have you a photograph of there?

A. I have, for instance, here, a photograph marked No. 4, on the back, showing the southwest corner of the crosscut, and intermediate drift of the 1,200 foot level, showing the fresh face. This is the face of which I have just been testifying.

(Testimony of J. C. Ralston.)

Q. How much ore was there at the time that photograph was taken?

A. There was practically no ore. There were then some streaks running through, perhaps, much the same as you would find them there, but not the amount of ore which I said originally existed. This is taken to show the condition there and to show the little streaks of ore which now exist, and to show the newness of the face.

Q. Does this show the corner from which that slab of rock, Defendants' Exhibit No. 18, was taken?

A. That shows the southwest corner.

Q. Indicate it from there what particular point that corner is, or is this the corner itself?

A. That is looking at the corner itself.

Q. Before or after the ore was taken off of it?

A. After.

Mr. STOLL.—We will offer this photograph in evidence.

(Same is marked Plaintiffs' Exhibit No. 51.)

Q. What other photographs did you take?

A. I have another photograph here marked No. 6, showing the width of the intermediate drift just east of the crosscut in the 1,200 foot level. It is intended to merely illustrate the width of that drift. It shows a man standing in the center of the drift with his arms extended this way, and apparently neither hand reaching the side walls.

Mr. STOLL.—I will offer this photograph in evidence, as Plaintiffs' Exhibit No. 52.

(Testimony of J. C. Ralston.)

Q. How large a man was it that was standing in the drift?

A. A man who stood, perhaps, at five feet eleven.

Q. What other photograph have you?

A. I have a photograph marked my No. 8, which shows the west face of the east drift of the 1,200 in Ella ground. That is the long drift where it begins and the crosscut ends.

Q. How far from the crosscut?

A. It is at the end of the crosscut, at the south end of the crosscut.

Q. What is the purpose of that?

A. This is merely taken to show the ore and vein as it stands revealed in this breast, showing how the ore runs down, and its usual dip, and how also it widens as it extends. And is shown here to illustrate amongst other things how a great body of ore, or any body of ore, might on a specific level cut off or decrease materially in size, and how when taking a sample along the floor one would find a six-inch streak of ore, where as immediately above it you might have ten feet of ore. I turned that upside down, and have a practical illustration of what is alleged to exist in the vicinity of this first photograph which I showed, where Mr. Wiard testified as to a trench having been driven across or along this crosscut, and across the intermediate, where he testified to two six inch streaks. This very happily illustrates that feature of it.

(Testimony of J. C. Ralston.)

Q. How much ore, by turning it upside down, do you have there, as shown upon the photograph?

A. In this particular case you have approximately three times as much ore above this line as you have below it.

Mr. STOLL.—I will offer this photograph in evidence as Plaintiffs' Exhibit No. 53.

Q. Mr. Ralston, did you hear the testimony of Mr. Cartwright, and, perhaps, another witness or two, to the effect that a trench had been dug on the 1,200 at the crosscut?

A. Yes, sir.

Q. And that they had taken samples from that trench?

A. Yes, sir.

Q. When you visited the mine there with Mr. Harvey when did you say that was?

A. September 20th and 21st.

Q. No, recently?

A. I think it was last Friday.

Q. What day of the month?

A. Friday was the 24th. We went to work on the 24th and visited the mine on the 25th of January, 1902.

Q. At that time, who accompanied you through the mine?

A. Mr. Smith and Mr. Cartwright.

Q. Both in the employ of the defendants?

A. Yes, sir.

Q. They were sent with you for the purpose of—at least they did accompany you and took observations as to what you did?

A. Yes, sir.

Q. Did they give you any advice or state to you any-

(Testimony of J. C. Ralston.)

thing about their having dug a trench on the 1,200 at that crosscut? A. No, sir.

Q. And what they have found there, or invite you to go down and inspect it?

A. No, sir. No reference was made to trenching or sampling of trenches, or anything of that character.

Q. Did they give to you any other assistance or point out to you at any place in the mine any physical conditions that would either aid you in testifying for the complainants or put you upon the right track in case the complainants' theory of this case was incorrect?

A. No. They accompanied us as I said before; they merely accompanied us. Of course we had conversation from time to time, passing jokes and the like of that.

Q. That was all there was to it?

A. That was the essence of the business.

Q. You are an engineer, Mr. Ralston?

A. Yes, sir.

Q. United States Deputy?

A. I am in several states, yes.

Cross-Examination.

(By Mr. HEYBURN.)

Q. Mr. Ralston, I refer you to your blueprint, Plaintiffs' Exhibit No. 43, on which you show several stopes. Is that made from an actual survey made by you?

A. Of the stopes as I stated, all of the lines drawn on that map excepting the 800 level, is a copy of your own map.

(Testimony of J. C. Ralston.)

Q. Then it is not made, or does not purport to have been made from your personal surveys?

A. With the exception just named.

Q. Now, you have drawn the O'Neil stope on this map above the 800 foot level. Did you survey that and make this map from an actual survey of that stope?

A. We made the measurements from which that drawing was made.

Q. I have used the word survey. Did you make it from an actual survey?

A. Actual survey, you understand, includes measurements.

Q. But I will use the term survey. Did you make that from an actual survey with an instrument?

A. Not with an instrument.

Q. You surveyed it with the eye?

A. I made a survey without an instrument.

Q. With the eye?

A. With the tape line, and plumb line and such.

Q. What instruments did you have with you in making or measuring this stope from which you have put it upon this map; that is, the O'Neil stope?

A. The tape line.

Q. Anything else but a tape line?

A. That is all.

Q. You did not have a level? A. No level.

Q. Nor plumb line? A. No, sir.

Q. You just had a tape line?

A. I had a tape line only.

(Testimony of J. C. Ralston.)

Q. What measurements did you make in that; how many?

A. We made a number of measurements first in respect to the width of the ore and the like of that; but the measurements from which the drawing is made consisted in measuring the length of the stope.

Q. At what points; on the floor?

A. On the floors.

Q. And the roof?

A. We did not measure up to the roof. We measured under the roof.

Q. Did you measure along the top of that stope?

A. Yes.

Q. Longitudinally? A. Yes, sir.

Q. How many feet was it?

A. I will scale it for you.

Q. I would like to have your memory.

A. Well, my recollection is now somewhere in the vicinity of fifty feet.

Q. How long was that stope longitudinally along the floor on the 800 feet level?

A. Well, it was some ten or fifteen feet less.

Q. What is the scale of this map?

A. Forty feet to the inch, I think.

Q. And it was ten or fifteen less in length along the floor than it was along the top of the stope?

A. What floor?

Q. Of the 800.

A. The 800 floor, yes, sir.

(Testimony of J. C. Ralston.)

Q. Now, you have said there was about how many feet that have been freshly pulled down.

A. I said my judgment or guess would be that there must have been possibly six feet of it, assuming that the stope stood vertically with the timbers?

Q. Don't you know there has not been any of it pulled down at all since this suit was commenced?

A. Do I know what?

Q. Don't you know there has never been any of the face of that stope pulled down at all since this stope was opened, since this suit was commenced?

A. I don't know that. I think I could say very safely indeed that perhaps there are no large pieces, but there is some of that stope falling.

Q. Now you are using the term falling. Is this purely a question of caving down? I understood you to convey the idea that some one had mined this down.

A. I think perhaps I used two or three words in that connection; I said pulled or fallen. If I did not I should have said so.

Q. What do you think? That that has been mined or pulled down, this six or eight feet of it?

A. Well, I would not like to venture an opinion on that. The only comment is that it is a fresh face, and much of the material lying below is moderately fresh. Conclusions could be drawn of course that it might have fallen, or sloughed off, but on the contrary it could have been blown down by the miners.

Q. And it might have just fallen? The O'Neil stope,

(Testimony of J. C. Ralston.)

as you call it here, or as it is called, did you measure the distance between the Clark stope and the O'Neil stope with the tape on last Friday? A. Yes, sir.

Q. How many feet is it?

A. I have forgotten now unless I scale it there.

Q. You have no recollection on the subject?

A. No.

Q. You had just a tape line?

A. A tape line.

Q. You have drawn the Clark stope. You measured that along the 800 with the tape line, too, didn't you?

A. Yes, sir.

Q. Measured it along the top of the stope.

A. To determine the length of the stope we measured it on the floors.

Q. The drift is perfectly straight between the O'Neil and the Clark stope?

A. Oh, as those stopes prevail there, not a mathematical line.

Q. Can you see from one to the other?

A. I think you can very handily.

Q. You did not make any survey with instruments at all when you were there the other day, of the Clark stopes? A. Not with an instrument.

Q. Just a tape line measurement?

A. Yes, sir. I might say in that connection that I had a copy of your map of the 800, so that I could always determine such data as I should wish to add to whatever I might have accumulated.

(Testimony of J. C. Ralston.)

Q. You have criticised this map. I am using a copy of the map offered the other day, in which you say there is a blurred showing of the Clark stope on the 600. Did you survey that stope any more accurately than the defendants.

A. This is not the map I referred to in my testimony.

Q. No, these are all imprints from the same original.

A. No, sir, I think not. Your first section file, as I recollect it, is not that section.

Q. Well, just call for the exhibit you refer to. They are all here.

A. My recollection is of that, that there was filed when you came into court, another longitudinal section answering the description which I made.

Q. Perhaps I can assist you in this. Is it not a fact that the showing you refer to was on the 800, as it is here on the 1,600 on this map. That was before the 800 foot stopes were available that we showed them in the same condition as we show the 600 on this map, which I now show you. This is the map Mr. Smith identified the other day. Isn't it a fact that the blurred condition on that map you referred to is as shown on the 600 on this map?

A. That is my recollection, that you showed blue pencil spots upon the map at that time.

Q. Don't you know that that was because at that time the 800 foot level was not accessible, that it had not been reached by the opening or development?

(Testimony of J. C. Ralston.)

A. No, I cannot say that. If I did, I had forgotten it. I do not know in fact that it was not.

Q. Why didn't you go up into the 800 when you were surveying before this? This is the first time you had been in the 800, on last Friday? A. Yes, sir.

Q. Why didn't you go in there when you were there before?

A. Well, it was not accessible from below.

Q. Well, that is it. Why not come right out and say so.

A. Well, I do not desire to resort to subterfuge. I desire to be as fair in the matter as possible, and moreover I would not like to have you say that I had criticised your map. It was not in sense of criticism, but in the sense of stating what I recollected of that map, and the reason why I have my stopes showing there.

Q. Have you not seen and had access to this map that was offered in evidence on the 7th or 8th of January hearing, that gave an actual survey of those stopes upon the 800?

A. I don't think I ever saw it until you unrolled it here.

Q. Wasn't you present at the hearing when Mr. Smith testified and offered this map in evidence?

A. Yesterday, I think.

Q. No, this map was put in evidence at the first hearing.

(Testimony of J. C. Ralston.)

Mr. GORDON.—It has been with the examiner ever since then.

Mr. HEYBURN.—All right; I wanted to see what information this witness had. I could not see any object in attacking the accuracy of a map.

The WITNESS.—Well, I think you misunderstood that feature of it, Mr. Heyburn.

Q. Now, Mr. Ralston, you have gone into some figures as to the expense of reaching the ore in the Clark stopes, and have drawn deductions from it that the expense would be so great that it would not pay to run from the stopes into the Poorman over there. Were you referring to the ore above or below the 800 foot level? A. The ore above the 800.

Q. Well, it is all opened up by the 800. A. Yes.

Q. What necessity would there be to run any more levels to get at that ore then?

A. Well, you are speaking of the cost of extraction of the ore?

Q. The cost of extraction would be considered in connection with the present development, would it not?

A. The cost of running of that drift would be charged to whatever ore you were pulling down.

Q. That drift was run many years ago, was it not?

A. Possibly it was; I don't know when it was run.

Q. It was run before the stopes were started?

A. Necessarily.

Q. Then you would not recharge the expense of that to future development, would you?

(Testimony of J. C. Ralston.)

A. You would charge it to whatever you took out. If you are running to reach a stope you would charge it to that stope, I imagine.

Q. I understood your testimony was in the nature of the testimony of an expert, or a man who is familiar with the cost of mining, and you were attempting to show that the ore in the Clark stopes could not be mined now, because of the expense of reaching it?

Mr. STOLL.—No, he does not testify that.

Q. Did I understand you correctly?

A. No, it was not in that sense. It was to show the cost, as I stated, at the time of taking out that specific shoot of ore,

Q. Do you mean in the past or future?

A. The cost to take it now, or possibly, if you please, some time past, or if you please, in the future.

Q. Then you think that you would count the cost of that 800 foot drift or level in estimating what it would cost from this time on to take out ore from those stopes?

A. Out of that particular shoot, yes, in this controverted ground.

Q. You would give no credit for the fact that the work was already done and paid for?

A. Well, there might be circumstances under which I would, surely. I have in view the fact of this controverted ground, Mr. Heyburn, you understand.

Q. If you were in charge of that mine to-morrow, and were considering the question as to whether you would resume operations on the Clark stopes and take out ore,

(Testimony of J. C. Ralston.)

would you be deterred from the fact that this 800 drift had cost a great of money, or would you be governed by the question as to whether or not from this time on you could work it to a profit? How is that?

A. Oh, I guess you are right about that.

Q. Now, you say there was no merchantable ore in the Clark stopes or in the stopes above the 800 foot level. Did I understand you correctly?

A. In the Clark stopes, I think that is what I stated.

Q. The stopes above the 800 foot level that you examined, all of them or either of them, was there any merchantable ore in either of them?

A. I saw none. There is ore in there which taken by itself would be merchantable. to be sure; but the expression "merchantable," as applied to the extraction of ore, no, I saw none in that respect.

Q. What do you call merchantable ore?

A. Ore of sufficient value and of sufficient quantity to warrant mining.

Q. What would be a sufficient quantity and quality of ore to warrant mining under existing conditions in the Clark stope?

A. I should base that answer upon what I found in that mine below, and it would be this. Possibly, with respect to value, fifteen or twenty per cent ore, and in width say twelve inches.

Q. That is about the limit, is it?

A. Well, that seems along those lines to have prevailed pretty generally below.

(Testimony of J. C. Ralston.)

Q. Have you had any experience in extracting ore and determining the question of whether it would pay or not? A. Not there.

Q. Anywhere? A. Yes, sir.

Q. Where?

A. In the State of Washington, for instance.

Q. In what mine? A. Various mines.

Q. Did the duty devolve upon you of determining whether the ore would pay to take out or not?

A. It did; yes, sir.

Q. In what mine? A. Well, a number of mines.

Q. Give me one of them, Mr. Ralston.

A. The Deer Trail mines, in Cedar Canyon, for instance, and several of the mines in the Republic Camp, if you please; and two mines I remember in British Columbia.

Q. Were any of them silver-lead mines?

A. Two of the mines carried lead, and two of them were silver mines; essentially, silver mines.

Q. They were not mined for lead-silver ores?

A. They were mined for silver ores, generally. The ore was largely silver.

Q. Did I understand you to make an estimate of the value of the ore in the Clark stope that would be represented by the void?

A. No. I made an estimate of what the shoot might contain.

Q. You say these samples you brought from the Clark stope are representative samples? If the Court should

(Testimony of J. C. Ralston.)

send a man there to bring samples from that mine, you say those are as fair samples as he could bring of the ore; that is, you have as good and as bad ore as there is in that stope, have you?

A. By virtue of the fact that those samples in every instance represent the full width of the vein as contained in each piece, I cannot conceive of any other conditions which would be more representative.

Q. Then, a test of the value of those samples, 1, 2, 3, and 4 that you have introduced here to-day, will be a fair test of the lead found as it is exposed in the Clark stope, will it? In case the Court sends somebody there to sample that ledge?

A. Well, I cannot say that. The greater the number of samples taken of a vein or stope, of course, the more satisfactory the result would be.

Q. You were present at the hearing of this case in the early part of January, in which the witnesses for the defendants testified that they had sampled the floor of the Clark and O'Neil stopes on the S00 foot level, were you not, and you knew that they had sampled the floor of those stopes?

A. I was present a part of that time, yes, and I heard some testimony given of values, and the like of that.

Q. And you knew they had been sampled; that is, that the defendants had sampled the floor of those stopes?

A. I do not recall that item.

Q. You heard Mr Wiard testify that he took those samples of thirty to thirty-six inches across the floor of

(Testimony of J. C. Ralston.)

the stope in the 800 foot level, in the Clark stope, did you not? A. Yes, sir.

Q. And give the results in lead and silver?

A. Yes, I think I did.

Q. Then, why didn't you, when you were up there last Friday, do the same thing?

A. Well, that was yesterday he testified.

Q. You heard him testify to that a month ago, didn't you, in the early part of January?

A. I am not sure about that, Mr. Heyburn. Perhaps I did.

Q. Why didn't you sample the floor of those stopes, when you were there?

A. Well, we were sampling; we brought into court here what we considered to be fair samples of a vein or a face which stood without contamination, which stood without a fall of degree, and the resultant conditions which obtained in the floor of any level. And if, in addition to that, we found a face forty feet high, I think a man, ordinarily, would be excused from digging under a floor if he found that in the face.

Q. Then, it is not a fact that you did not do it because you were not advised that the defendants had done it, was it? It was because, in your judgment, it was not necessary, wasn't it?

A. I say, frankly, Mr. Heyburn, that I have forgotten that Mr. Wiard did testify as to the floor. I had forgotten that he had testified, or that anybody had testified, as to any floor samples.

(Testimony of J. C. Ralston.)

Q. Was there any clean galena ore in the Clark stopes at any point exposed? A. Yes.

Q. Why didn't you bring some of it into court?

A. Because, in bringing a sample of this character, I believed I was bringing more of a representative sample than gouging out a little clean galena.

Q. You have not any doubt but that large piece of rock in the box is that corner that you saw and that you photographed, have you?

A. Oh, I haven't any reason to question it, Mr. Heyburn.

Q. Mr. Ralston, you do not want to be understood as saying that, in your opinion, between the time that piece of rock was taken down and the time you first saw it, some galena had been taken off that corner, do you?

A. Between the time I first saw it?

Q. Yes. A. First saw the corner, you mean?

Q. Yes, and the time that this was taken.

A. I don't know when this was taken, but I know this—that by whatever method, I do not pretend to say—I do know that that corner was not in the same shape when I saw it on the 20th of September as it was when I saw it at an earlier date.

Q. What earlier date? A. May, of last year.

Q. You saw it in May, and you say that it had been changed, or a change had been wrought in it, between that time and September?

A. Yes, sir. I saw it in May.

Q. Mr. Ralston, when you testified in this case in No-

(Testimony of J. C. Ralston.)

vember, you overlooked that, did you, that the corner had been changed; that the galena stayed there on three of those corners, clean galena?

A. I think not; I think some reference must have been made in my evidence to that.

Q. Those are freehand drawings, are they?

A. No, sir, they are to a scale.

Q. How many samples did you take on the east face of the Clark stope?

A. I brought into court, here—

Q. How many did you take, at all?

A. We have taken these four samples, here.

Q. Did you take any samples that you have not produced here? A. No, sir, not at that place.

Q. At how many points did you measure or pick into the face of the ledge on the east face of the Clark stope?

A. We did not pick into it any place.

Q. How many points did you measure?

A. We measured and estimated wherever we could see it.

Q. How many places did you measure, and how many places did you estimate?

A. Well, I made two definite measurements that I remember now. I could tell by referring to my notes.

Mr. STOLL.—Refer to your notes.

A. My notes are not here.

Mr. HEYBURN.—No, not while I am cross-examining.

Mr. STOLL.—We object to his talking at random

(Testimony of J. C. Ralston.)

about matters that can be made absolutely certain by his notes.

Mr. HEYBURN.—No. this was last Friday, only a few days ago.

Mr. STOLL.—I state to the witness that he is entitled to refer to his notes, if he wants to, and not to answer at random.

Mr. HEYBURN.—Not when I am examining him.

Q. Now, Mr. Ralston, how many points did you measure when you were there last Friday examining the width of the ledge as exposed on the east face of the Clark stope?

Mr. STOLL.—Where are your notes, Mr. Ralston?

A. At the office, my office.

Mr. STOLL.—If you cannot testify without those notes, you can say so.

Mr. HEYBURN.—I object to that statement of counsel to the witness. I want the witness' memory to something that occurred within a week.

Mr. STOLL.—For the purpose of trapping him, for the purpose of bringing into the case confusion, rather than to make certain that which can be easily made certain. Put that into the record. The general character of this defense has been right along those lines from start to finish.

Q. Mr. Ralston, answer that question. (The last question was read.)

(Testimony of J. C. Ralston.)

A. I cannot say, specifically, unless I refer to my notes.

Q. I want your recollection of it.

A. I reiterate what I just said, and supplement that by this, that my business is one in which I am making a great many records of measurements, and I would have to have a better memory than I have to segregate and keep fresh in mind all those sort of things, to answer you as specifically as I ought to.

Q. Give me your recollection, Mr. Ralston.

A. I say my recollection would have to be refreshed by reference to my notes.

Q. Have you any recollection on the subject, at all?

A. I have a recollection of making a number of measurements.

Q. Give me the benefit of it.

A. This is for the benefit of it.

Q. You say you have no recollection?

A. No, I say I have a distinct recollection of having done the work and having made a number of measurements.

Q. How many measurements did you make to determine the width of the ledge on the east face of the Clark stope?

Mr. STOLL.—That is objected to as having been answered fairly and squarely.

Q. (By Mr. STOLL.) Can you get your notes? Are they accessible where you can get them in a few moments?

(Testimony of J. C. Ralston.)

Mr. HEYBURN.—The witness cannot leave the witness stand while I am examining him.

Mr. STOLL.—Give your answer to my question, Mr. Ralston.

A. I can get them by going after them to my office, yes.

Mr. STOLL.—How far is your office away?

A. A block; it would take ten minutes, perhaps.

Mr. HEYBURN.—Well, the witness will not be excused.

Mr. STOLL.—If counsel wants to further examine this witness, we insist that he be permitted to get his notes.

Mr. HEYBURN.—I will not excuse the witness from the witness stand until I am through cross-examining him.

Q. Do you decline to answer that question any more specifically?

A. That is as specifically as I can intelligently answer it.

Q. If Mr. Stoll had not suggested to you that your notes not being here would be an excuse for not answering it, you would have answered these questions, would you not? A. I think not.

Q. You were getting along very nicely with your recollection. Now, Mr. Ralston, how many places did you measure the width of the ledge in the Clark stope on the roof of it, that is, on the top, to determine its width?

(Testimony of J. C. Ralston.)

A. The answer to that would be the same as the answer to the other.

Q. Give it to us.

A. Namely, that I desire to have reference to my notes.

Q. Have you any recollection on the subject?

A. I have a distinct recollection of having done the work and having made a number of measurements.

Q. Have you any recollection as to the number of measurements you have made?

A. Not specifically.

Q. Have you any recollection? A. I have.

Q. Give it to me.

A. I know that I made more than three, and I know that I made less than fifty, for instance.

Q. How many more than three did you make?

A. Oh, I don't pretend to say, unless I can see my notes.

Q. I will ask you the same question as to the measurements on the west face of the Clark stope. How many measurements did you make to determine the width of the ledge on that face?

A. My answer to that would be the same as my previous answer to the previous questions.

Q. What is the answer? I want it specifically.

A. Namely, that to answer that intelligently, I will have to have access to my notes.

Q. Have you any recollection as to the number of measurements you made on that west face?

(Testimony of J. C. Ralston.)

A. I have.

Q. Give it to me.

A. In the same way that I just spoke of a moment ago; namely, that I know there is more than two or three, and I know that there were less than thirty or forty.

Q. Do you think there were twenty of them?

A. I don't say.

Q. You will not say?

A. If I can see my notes, I can tell you, definitely.

Q. Now, on the east face of that stope how perpendicular is it? A. The east face of what stope?

Q. Of the Clark stope.

A. It is irregular in the roof.

Q. Can you climb up to it?

A. Climb up the face?

Q. Yes.

A. No, I think not. I had a great deal of trouble to climb from floor to floor in the center of the stope.

Q. There are no places against the east face, are there, that you can pass from one floor to another?

A. I think all the floors on the east face were right up against the rock, against the face; that is my recollection of it, now.

Q. Could you get at all parts of the east face from the floor to the top of the stope?

A. No, not at all parts.

Q. How high up could you go?

Q. You could get, no matter on what floor you

(Testimony of J. C. Ralston.)

started, you could always get to the roof, and on the floor of which you speak there is more or less accumulating matter.

Q. How many floors were on that face?

A. There were four.

Q. Three or four different floors?

A. That is my recollection.

Q. And that is all you were on on the east face, was it? A. That is my recollection of it, yes sir.

Q. You were on four floors on the east face of that stope? A. I say, that is my recollection of it.

Q. And on each of those floors you measured the width of the ledge?

A. I measured and estimated it wherever we saw it.

Q. And the same is true of the west face, is it? You were on four floors on the west face?

A. As I said, we did not get in on one floor on the west face. I remember that particularly, as that is shown on a drawing there.

Q. And could you reach the roof or top of this stope from the top floor all the way along? A. No.

Q. How did you get at it to measure the ledge up there? A. We estimated it.

Q. With the eye? A. With the eye.

Q. Did you pick into it? A. No, sir.

Q. You couldn't reach it with a pick, could you?

A. Oh, yes.

Q. Why didn't you pick into it?

A. It was not necessary, as I recognized it as the

(Testimony of J. C. Ralston.)

same bone or slab of ore that forks and stands out so strongly there that it could be seen without any picking.

Redirect Examination.

(By Mr. STOLL.)

Q. How much clean galena did you find in those stopes?

A. I could not say as to that. There were places where one would see a little spattering of clean galena at times.

Q. How did the showing of galena there compare with what you saw in the 1,200 the first time you were in the 1,200?

A. What part of the 1,200? The 1,200, generally?

Q. Yes.

A. Well, with respect to the width, there is no comparison, at all. To be sure, there are places in the 1,200 where perhaps the ore might be found to be as lean, but the general prevailing abundance of ore in the 1,200 is much greater and much better and much richer than anything we saw in those stopes. My judgment is, that in those Clark stopes the average values there, perhaps would not be over five per cent; so that the values below, I fancy, of course, are much higher.

Mr. STOLL.—There is a matter I forgot to call his attention to, which I will recall him for.

Q. Did you make an examination of the 1,600 in the Poorman?

A. We went into the 1,600, I think; when the party was there; but not on this last trip.

(Testimony of J. C. Ralston.)

Q. I mean the 1,700.

A. We entered the 1,700, yes.

Q. Did you hear Mr. Miller's testimony here to the effect that the 1,700 drift was no better showing than the Clark stopes?

A. I think I did.

Q. What is the fact as to that?

A. My recollection of Mr. Miller's testimony in that connection was that it was a general comparison, in which he stated that the indications in the 1,700, and the appearance of it was very poor, and instituted a comparison in some way with the Clark stopes. It struck me at the time—and I have this very distinct idea on the subject—that inasmuch as the Clark stopes reveal so small a bone or slab of ore or quartz in its face and back, and that on the 1,700, where the vein is shown for a width of 2 feet, at least, in the breast, and in the back, for a short distance out from the breast, that there was no comparison at all. And that also in that connection it seemed to me rather unhappily drawn in this, that the 1,700 breast was five or six hundred feet, probably away from this ground in question, away from a point vertically under the Clark stopes.

Recross-Examination.

Q. Did you raise any question as to that piece of rock being the corner as you saw it there last September?

A. No; not as I saw it in September.

Q. You do not raise any question on that?

A. Not on that date. You mean the date when we went in as a party?

(Testimony of J. C. Ralston.)

Q. Yes, in last September. A. Yes.

(Witness excused.)

Mr. HEYBURN.—I want to say, before you close, gentlemen, so that you may consider it between now and the next meeting, that I have drawn and will serve on you to-morrow, a petition, to the Judge, to select an engineer and assayer, and send them on the ground in controversy. who shall not be witnesses of either party, or an engineer from the Coeur d'Alene country, to determine as to whether or not the ore that is said to exist there by the witness, MacDonald, five or six feet of clean ore in the 1,200 foot level, is or is not there. I will notify you to be there on the 8th.

(Whereupon, an adjournment was taken herein until to-morrow morning at 10 o'clock, Saturday, February 1st, 1902.)

Spokane, Feb., 1, 1902, 10 o'clock A. M.

The parties met pursuant to adjournment, whereupon the following proceedings were had, to wit:

J. C. RALSTON, recalled on behalf of complainants, testified as follows:

Direct Examination.

(By Mr. STOLL.)

Q. Mr. Ralston, a notice has been served this morning by the defendants upon the complainants to the effect that they are going to apply to the Judge of this court, to appoint an engineer and assayer to make an examination of the 1,200 foot level, also the 800 foot lev-

(Testimony of J. C. Ralston.)

el, in the Ella and Missing Link claims, with a view of advising the Court, as to the size and extent of the ore bodies therein. State, please, whether there are any ore bodies left in the 1,200, and state generally its condition.

A. The main ore body of the 1,200 in the east drift has been all stoped out, so that whatever ore is left standing will be found now in the west face of the east drift, where it starts from the end of the crosscut; and the ore at that point would not be a measure of the prevailing width of the ore body east of there, as I found it and saw it at various times. The ore along the 1,200, from a point about seventy-one feet east of this crosscut has all been stoped out both above and below the 1,200, while the 1,200 itself is in swelling ground, and has pinched probably two feet, since I first saw it.

Q. How about the ore body under the point where the diamond drill penetrated the vein in the east end, diamond drill hole No. 2?

A. That body has been stoped out.

Q. Both above and below?

A. Above and below.

Q. How about the intermediate drift?

A. That has been stoped for some time.

Q. Above and below, both?

A. I cannot say immediately below. There may be a little ore standing there, but if it is, it is pretty close to the end line.

Q. Could an intelligent report be made by an engi-

(Testimony of J. C. Ralston.)

neer or assayer or a mining man, as to the amount of ore and its character, that was contained in that level, either at the time this suit was brought or during the latter part of the year 1899, and the forepart of the year 1900?

A. You mean, could an intelligent report be made as to the values at that time, and the extent and width?

Q. Yes.

A. Well, yes, along the 1,200, I think, an intelligent idea certainly could be arrived at as the ore stood there.

Mr. STOLL.—Read my question. (The question was read.)

Q. Could an intelligent report now be made?

A. No.

Q. By an engineer examining it now. Why not?

A. Because the ore is not there to be seen, and because the 1,200, as I said, is in swelling ground, or was in swelling ground at any rate.

Cross-Examination.

(By Mr. HEYBURN.)

Q. Mr. Ralston, did you see the intermediate drift before the stope was made above it?

A. I can't say. My recollection very distinctly is that it was stoped when I first saw it.

Q. It had been stoped years before, had it not?

A. I don't know how long. I know some stoping evidently had been done there, because there was shoot there.

Q. Did you see the east drift before it was stoped?

(Testimony of J. C. Ralston.)

A. I saw the east drift before any of the ore was stoped out of the 1,200 floor; yes, sir. And I saw the backs of the stopes as they were progressing, and as they had broken through into the 1,200.

Q. When did you see the east drift first?

A. I would have to refer to my last year's diary to tell you that.

Q. In what year was it?

A. I saw it last year.

Q. And it had not been stoped then?

A. It certainly had not been, because they had broken through, opened only a few feet, when we as a party examined the mine in September.

Q. I refer to the stope above the east drift.

A. Yes, sir.

Q. Did you ever see the east drift before the stopes rising from it were made?

A. Well, I don't know to what height the stopes were when I first saw the east drift, no.

Q. But they had been practically stoped up there?

A. There was stoping evidently going on up above there, taking ore out of there and out of those shoots, as I recollect it now.

Q. What stoping has been done on the 1,200 foot level in this ground in controversy since you first saw it?

A. I don't know, I am sure.

Q. With regard to the quantity of the stoping?

A. My idea of that is that there probably has been a

(Testimony of J. C. Ralston.)

quarter of the stopes taken out since I first saw that mine.

Q. (Direct.) That is above the 1,200?

A. Above the 1,200.

Q. And whatever was taken out, it was already stoped up a considerable distance when you first saw it?

A. There was some stoping, I suppose.

Q. Has there been any new stoping started up above the 1,200, on this ground in controversy, since you first saw it? Any stoping started from the roof or top of the drifts? A. From the top of the 1,200?

Q. Yes? A. No, I think not.

Q. Then, it had all been stoped up some distance when you first saw it?

A. Possibly. Not all of it, no; but there were some stopes.

Q. What part of it?

A. As I said before, that part of it lying east of a point about 71 feet from the beginning of the east drift.

Q. Has that all been done since you first saw it?

A. Oh, I do not know when that was done. That has been done probably before. Some of it at least.

Q. Had it not all been done before?

A. I do not know that it had.

Q. Don't you know all the stoping was done, that has been done at all, on the 1,200, before you ever went in there? A. No; I do not know that definitely.

Q. Is it true? A. I don't know.

Q. Do you know of any stoping being done on the

(Testimony of J. C. Ralston.)

1,200 in this ground in controversy since you first went there? A. My impression is there has been some.

Q. Where? A. Above the 1,200.

Q. At what point?

A. Along between the east end line of the Ella and the seventy-one feet, which I mentioned.

Q. Did you see it being done?

A. I did not.

Q. What did you see that makes you think it was done?

A. My recollection is that I saw ore coming down, being taken out of those shoots, and my inference was—

Q. (Interrupting.) You did not go up in the stopes?

A. Not at the early dates, no.

Q. Not at that time? A. No.

Q. Then the stopes are now, so far as you know, in the same condition that they were at the time you went in there, are they not, above the 1,200?

A. Well, not wholly.

Q. State where they are not. I want the exact condition.

A. My impression is that they were not, by virtue, amongst other things, of that swelling ground.

Q. I do not mean the physical change. I mean so far as stoping is concerned.

A. That I cannot answer definitely.

Q. If you do not know to the contrary, what would you base any other conclusion on? If you do not know anything upon which to base a conclusion that the

(Testimony of J. C. Ralston.)

work was done, why do you hesitate to say that no work has been done, to your knowledge?

A. I stated a moment ago on that, very specifically, what I thought about that.

Q. I do not think you have. I will ask you the question. A. Perhaps, I am obtuse on the matter.

Q. Has there been any stoping done in the stopes above the 1,200 since you first went into those stopes?

A. I do not know.

Q. Why do you say—you claim to make an intelligent report on it, do you not?

A. Trying to; yes.

Q. Why did you say in answer to Mr. Stoll's question, or why did you change your testimony? You said first a man could make an intelligent report, and then on a suggestion or an intimation from counsel you said he could not? A. Not at all.

Q. Why do you say a man could not make as intelligent a report as you have made on it, if the conditions have not changed?

A. Well, as I stated before, that ground is swelling. Now, if a man goes in there to determine the width of that ore body, or the probable width of it when it existed, and finds that ground, to-day, swelling to the extent of two feet, I cannot imagine that he could make an intelligent report of it.

Q. You are making it on that basis, are you not?

A. No, sir. I am making it on the basis of what I

(Testimony of J. C. Ralston.)

saw before the ore was taken out, immediately under the 1,200.

Q. But the swelling above would not affect it immediately under it, would it?

A. The whole region of swelling may extend some distance you know.

Q. Mr. Ralston, have the timbers in the floor of the 1,200 under that stope been crushed at all?

A. They have along the 1,200?

Q. Above it, but have they below, below where the stope comes up to the 1,200, over the 1,300?

A. When I was in there I did not see any timbers. They were knocking out the ore; but below that—

Q. (Interrupting.) Don't you know there has been no pressure or closing up of that stope below the 1,200 floor?

A. No, sir; I do not.

Q. It did not occur to you to look at that, did it? Now, Mr. Ralston, I want to ask you something in regard to the ore at the intermediate crosscut. Did you ever see five or six feet of clean galena ore in the vein or stringer that was cut at the intermediate crosscut, or where the crosscut intersects the intermediate drift?

A. I saw the intermediate drift, and when I first saw it, I saw ore in three corners.

Q. You still stick to that, do you?

A. I certainly do.

Q. You said you saw clean galena ore in three corners when you were first examined?

A. Yes.

Q. You still stick to that?

(Testimony of J. C. Ralston.)

A. I reiterate what I said previously.

Q. Have you examined the floor of that intermediate drift where it intersects the crosscut, to see whether there is any ore there at all? A. No, sir.

Q. You did not examine that?

A. I did not examine the floor.

Q. Did it occur to you as a mining engineer that that would be the place to examine it to determine what they found, on the floor, at least, of the crosscut?

A. If I were making a complete examination I would expect to do that.

Q. Why would you not make a complete examination to prepare yourself to testify to the facts in this case?

A. Because I was refused admission to the mine to do that very thing.

Q. When?

A. When I went up there for the purpose of doing it.

Q. You went there under the order of the Court, didn't you? A. I did.

Q. Who refused you permission to do that particular thing? A. Mr. Miller.

Q. Nobody curtailed your stay there, did they?

A. I was there on my first visit, for I think, perhaps, two days, and that was as long as I could possibly stay there at that time, and so notified your Mr. Miller that I would like to return and complete the work I had left incomplete.

(Testimony of J. C. Ralston.)

Q. And that was the work you wanted to complete?

A. I wanted to make a good deal of additional observations.

Q. Was this the work you wanted to complete, the observation of the floor of that drift?

A. That amongst *other* things; yes, sir.

Q. How often have you been there to examine that mine on the 1,200 foot level?

A. Oh, three or four times; three times or four times, possibly.

Q. How many days altogether?

A. Four or five days possibly.

Q. Four or five days altogether. Did Mr. Miller or yourself ever refer to doing this work at the intersection of the intermediate drift and the crosscut, ever talk about it?

A. No, there was no more reference made to that specific point than to any other point that I had in mind.

Q. Did Mr. Miller ever tell you that you could not make exploration or examination there?

A. Oh, no.

Q. Well, I say to you now, that you can do it if you want to, if you want to make an examination of that work. Do you?

Mr. STOLL.—After the case is tried and we are ready to rest is a pretty time to tender us that privilege, to become so generous and liberal in your offers.

Q. Why didn't you examine it last Friday when you were there, a week ago yesterday?

(Testimony of J. C. Ralston.)

A. I did not have the time.

Q. Why did you not take the time?

A. Because the trial was too close at hand.

Q. How long would it take you to examine a space ten feet long, at the intersection of the drift?

A. Well, we would want to dig a trench, of course.

Q. How long would that take?

A. I should want to take a day to it.

Q. Would you do that digging, yourself, or have it done? A. I would have it done.

Q. It would take a day to dig a trench? Why didn't you take a day?

A. As I say, I did not have the time; the trial was at hand, and we wanted to prepare some little matters.

Q. Did you make any attempt to do it, at all?

A. I did not make any attempt, because it was my purpose to complete my examination at the earlier date, at the time, as I say, when I was refused admission.

Q. I want to know a little more about that refusal of admission. Tell me when that was, and what was said, and we will see whether it amounts to a refusal or not.

Mr. STOLL.—We object to that, because we went into it in our case in chief, and the defendants have not attempted to deny it in their case. Three witnesses, Mr. MacDonald, Mr. Ralston and James Porter, testified to it. And Ralston, Porter and MacDonald were all three denied admission, and no attempt was made by the de-

(Testimony of J. C. Ralston.)

defendants to deny any part of it. I state that as my recollection of the testimony.

Q. Go ahead, Mr. Ralston.

A. I cannot give you the details as fully and completely now as I did in the examination in chief; but my recollection is that when I applied for admission, when I called Mr. Miller up by telephone, from Wardner, where I was, I stated that I desired to return again to the mine to complete that work which I had left incomplete, and he stated that he would be compelled to refuse me admission to the mine, under advice from his attorney.

Q. Did he give you any reason for it?

A. No, none other than that.

Q. Where was Mr. Miller at that time?

A. I have forgotten whether he was in Wallace or Wardner. I think he was in Wallace.

Q. And you were at Wardner?

A. I was at Wardner.

Q. You never went to the mine and was refused admission there?

A. Yes, I was refused admission at the mine, I think.

Q. When?

A. I cannot give you the dates, unless I can refer to my notes.

Q. I would like to know the dates.

A. By referring to my evidence, I can give it to you.

Q. No, I want your memory, your recollection.

(Testimony of J. C. Ralston.)

Mr. STOLL.—If the witness has no memory on it, and says so, he cannot be expected to give it.

Mr. HEYBURN.—We will hear what the witness has to say about that.

A. There were a number of dates there in connection with those visits, Mr. Heyburn, and I might give you the wrong date, and therefore I say that I prefer to refresh my memory by reference either to my diary or to the examination.

Q. Were you refused admission to that mine, at the mine, on making application there, at any time?

A. I think I was.

Q. Were you, or were you not?

A. I cannot state now. That has all been set out in my testimony.

Q. I know, but I am not bound by your testimony, at all. Your attorney might be, but I am not. I want to know whether you were, or were not, refused admission?

(Objected to as improper cross-examination.)

Q. Well, Mr. Ralston, have you thought out whether or not you were refused at the mine the privilege of entering?

A. I cannot recall specifically whether I was refused at the mine or not. I know I was given that refusal as I outlined it before.

Q. That was all there was of it, a telephone refusal?

A. Well, there was a refusal. I remember, when I

(Testimony of J. C. Ralston.)

took Mr. Fassett up there to assist me, Mr. Fassett was refused at the mine. I remember that, distinctly.

Q. You were not refused, were you?

A. Not at that time.

Q. You were simply told that Mr. Fassett was not included within the order for admission, were you not?

A. I don't remember the words used by Mr. Miller, but it resulted in a refusal to allow Mr. Fassett to accompany me, as my assistant, there.

Q. Mr. Ralston, you have been in the mine several times since this alleged refusal, haven't you?

A. I have been in the mine once since.

Q. You have not applied to go in any oftener, have you?

A. No.

Q. On the occasion of your last visit, you went in there and stayed as long as you chose; there was no limitation placed on you, at all, was there?

A. None.

Q. Now, did you ever see five feet of clean galena ore in the crosscut, at or about its intersection with the east drift?

A. I saw, what I have stated so many times before, Mr. Heyburn, galena standing on those three walls.

Q. I am speaking of the inside drift, now, the east drift?

A. Oh, the main east drift of the 1,200?

Q. Yes.

A. Now, repeat that question. (The question was read and the witness continued.) No.

(Testimony of J. C. Ralston.)

Q. How much galena ore have you ever seen in that crosscut, at any point; solid, consecutive galena ore, in width?

(Objected to as improper cross-examination.)

A. Now, you mean the crosscut entering into the south drift?

Q. Yes.

A. When I say I saw galena ore standing on the three corners, I think that that must surely cover the proposition. I cannot say how many feet there would be there when the thing is stoped out and taken out.

Q. I want to know how much the largest body of galena ore you ever saw at any point would be. I do not mean how much void you saw between two pieces of galena, but I want to know the largest body of galena ore you ever saw in that crosscut?

A. Well, the bodies of ore which I saw standing on both corners, I can't say as to how wide they were. I saw them standing there. But their depth into the wall, of course, I could not say. They may extend one inch or two inches, or five feet.

Q. I want your judgment. You have testified here as a mining engineer, capable of telling. I want your judgment on it, so that the engineer to be sent there by the Court may check it up on your testimony?

A. Well, sir, I have not the occult ability to see into a wall of ore, nor has any engineer. If I see a face of ore there, I see that, but I do not see into it, and, as I

(Testimony of J. C. Ralston.)

say, I could not tell you whether it was one inch deep or five feet.

Q. You are not willing, then, to say how much galena ore you saw there in width, at any point in that crosscut?

A. I say that is a physical impossibility to answer.

Q. Mr. Ralston, how about the right-hand wall of that drift. It is only broken in one place, is it not, during its entire length, and that is at the intermediate crosscut?

A. Yes, sir.

Q. Did you see any evidence of any bodies of solid galena, or clean galena ore, at any point along that right-hand side of the crosscut?

I saw evidences of mineralization extending through from that intermediate on to the end of the crosscut.

Q. To what extent does that mineralization exist? What did it amount to, in the way of ore?

A. It did not amount to much ore.

Q. Would not pay to work under any known process, would it?

A. Between the intermediate and—

Q. At any point? I will give you your choice; take the best point, then I will ask you about the size of it, afterwards.

A. I say there was only mineralization outside, beyond the drift, either north or south.

Q. No ore, at all?

A. I should not call it much ore there.

Q. You saw the streak of ore that was in the right-hand side opposite the mouth of the east drift; didn't

(Testimony of J. C. Ralston.)

you? The piece which was in evidence here a day or two ago; you saw that ore, there?

A. This big piece of ore you brought down?

Q. The piece about six or seven inches in width, there. You saw that, didn't you? A. I don't remember.

Q. It is the west breast of the east drift?

A. I don't remember having seen that.

Q. Did you see any ore there in the mine at the west breast of the east drift? A. Yes.

Q. How much? About four feet of it, clean ore?

A. Oh, no; I think there was about from six to twelve inches of ore in there.

Q. It showed at the top of the side of the drift, opposite the west; that is, opposite the east drift, did it not? A. It showed all the way down.

Q. Clear to the floor? A. Yes.

Q. Of what width? A. Of varying widths.

Q. But of what width was it at the bottom, or near the bottom?

A. Near the bottom, my recollection is it was about twelve inches.

Q. How wide was it at the top?

A. Well, it was perhaps eight or ten inches wide, or perhaps only six inches in width.

Q. That is what this engineer will find when he goes there is it?

A. Yes, sir; I gave the figures here yesterday, showing that very width.

Q. Now, about the top of that drift: Did that extend

(Testimony of J. C. Ralston.)

clear across the top of the drift into the east drift; that is, clear across the top of the crosscut into the east drift?

A. It continued all along the east drift.

Q. Of that width? A. Of varying width.

Q. That has not been disturbed, the top of that drift, for the first seventy-eight feet; that is a fact, is it not?

A. I imagine that is a fact.

Q. Now, will an engineer find a streak of ore extending the entire length, from the crosscut into the point where the stope commences, of seven or eight inches of clean galena, if he goes there?

A. Well, I don't know what he will average it up as being. He will find a streak of ore.

Q. Continuous?

A. A mineralized matter, mineralized rock, vein stuff, all the way in, very clearly defined.

Q. How much ore will he find?

A. I cannot tell you how much he will find.

Q. How much did you find?

A. I found a streak varying in width from six inches until it finally widened out to a width sufficient to stope.

Q. Is six inches the minimum width of that streak?

A. Oh, I fancy you could go there, if you desired, Mr. Heyburn, and find streaks perhaps not wider than your finger, possibly no streaks, at all, if you went at it to find your regular cross-sections.

Q. How many feet of ore of a streak will he find, six inches or more in width?

A. I would not pretend to say.

(Testimony of J. C. Ralston.)

Q. Half the length of that seventy-five or eighty feet?

A. I would not pretend to say as to that.

Q. Will he find ten feet six inches wide?

A. Oh, he will doubtless find ten feet.

Q. Would you raise that length any above ten feet?

A. Well, now, I have not made specific notes on that, and I cannot tell you.

Redirect Examination.

(By Mr. STOLL.)

Q. Is the floor of that east drift on the 1,200 in the condition now that it was in when you examined it?

A. It has all been stoped out.

Q. What condition was it in when you examined it?

A. The first time I saw it, it had not been touched; it had a car-track through there.

Q. It is stoped clear down to the 1,300 now. is it?

A. Yes, sir.

Recross-Examination.

Q. It has not been stoped, at all, along the first seventy-four feet, has it? A. No.

Q. Then, you can examine the floor or roof along the first seventy-five feet of the east drift?

A. I stated that very specifically; but the point where the stope begins, on eastward, it is all taken out.

Q. There is plenty of opportunity to examine both the floor and the top of the east drift for the first seventy-five feet, is there not?

A. For that seventy-one or seventy-five feet, or that

(Testimony of W. S. Norman.)

part of the vein which apparently is too narrow to mine or to stope, yes, certainly; but no place else.

(Witness excused.)

W. S. NORMAN, being recalled on behalf of the complainants, testified as follows.

Direct Examination.

(By Mr. STOLL.)

Q. You are the president of the Hotel Spokane Company? A. Yes, sir.

Q. Did you keep a register of arrivals during the year 1899? A. Yes, sir.

Q. In October? A. In October.

Q. Turn to the 12th of October, and see if you have among your arrivals at that time Edwin Packard?

A. Yes, sir.

Q. Do you know Mr. Packard's handwriting?

A. Very well.

Q. Is it in his handwriting? A. Yes, sir.

Q. When did he arrive at the Hotel Spokane?

A. He arrived in the morning of October 12th.

Q. How long did he remain?

A. He remained until the morning of the 16th.

Q. Of what month and what year is that?

A. The month of October, 1899.

Q. How long was he away?

A. He left on the morning train on the 16th, and came back—

Q. I don't care for that. That is all.

(Witness excused without cross-examination.)

JAMES P. HARVEY, being recalled on behalf of complainants, testified as follows:

Direct Examination.

(By Mr. STOLL.)

Q. Mr. Harvey, did you accompany Mr. Ralston to Burke on the 25th of January, 1902, to make an examination of the Clark stopes? A. Yes, sir.

Q. After the testimony was partially on the part of the defendants? A. Yes, sir.

Q. How much experience have you had in mining, Mr. Harvey? A. Sixteen or *seven* years.

Q. You were at one time foreman of the company that operated the Poorman mine, which is one of the group of the defendant companies? A. Yes, sir.

Q. Now state what you did upon that examination.

A. We went into the 1,100, went up the raise from the eleven to the eight and into the Clark stope and O'Neil stopes on the 800 to the east and back down again.

Q. State what examination you made there?

A. In going—I have some notes here—on the 16th floor in that raise, which would be about 140 feet from the eleven—no, east stope of that raise, I think that is the end of the No. 2 stope or chute in that ground. The No. 3 chute is farther to the east and I think ten or twelve feet into the hanging side of this place. The twenty-first floor, east side of the raise, or the Ella side, showed from one to three inches of quartz and lead mixed. The twenty-fifth floor, or two floors under the 800 about, there was no ore on the east side of the raise, or the Ella side, which raise runs up practically on

(Testimony of James P. Harvey.)

the line, part of it on the Poorman and part of it on the Ella. I might state that that is what Mr. Gus Smith, the engineer for the defendants in this suit, told us at the time. On the west side of the raise where it holes into the floor of the 800-foot level the ore shown at that point is the size of a piece marked sample No. 4. Mr. Ralston and I took that sample.

Q. How big was it?

A. Well, I should judge an inch and a half wide. We went up in the Clark stopes, and in the face of the third floor, on the west side of the Clark stopes, we took sample No. 1, which was two inches wide there, the hard bone of ore.

Q. That is, the width of the ore body there?

A. That is the width of the ore seam, yes. The vein is wider; probably thirty inches of vein matter enclosing this ore; but that is the ore two inches wide. On the floor below that sample I made a memorandum, estimated that it is not over six inches wide below where that sample was taken, and above that sample, opened up from two inches until within about a foot of the back it opened out in a bunch of eighteen inches. Going up to the fourth floor the fourth floor east face, ore not over six inches in small streak. West side of fourth floor; west side about five inches wide down to two feet from the floor of the fourth stope, and there it shows a bunch of eighteen inches, where it runs down into No. 3 floor. Ore on the roof of fourth floor, west

(Testimony of James P. Harvey.)

side, about six feet back from the west face cuts out; that is, narrows down to practically a seam. I estimated the average width of the ore along the roof of the Clark stope to be about six inches. Sample No. 2 which Mr. Ralston and I took is out of the group near the east face.

Q. That is in evidence here in Mr. Ralston's testimony, is it not, as an exhibit?

A. Yes, sir. Down on the second floor, on the east side of the Clark stope we took another sample four inches wide, which was the width of the ore seam, and called that sample No. 3. We went from there up to the O'Neil stope, went up on the fourth floor, and the west face of it looks freshly broken; whether caved or mined I would not pretend to say, but freshly broken.

Q. How much ore was there at that point?

A. I do not just remember now; six or eight or ten inches, or something of that kind. I did not make much of an examination of the O'Neil for the reason I did not consider them in the ground in controversy.

Q. You assisted Mr. Ralston to make a measurement, and you made that determination there, did you?

A. Yes, I measured up with Mr. Ralston from the Ella raise to determine the Ella lines, and from there we went home.

Q. What do you say, Mr. Harvey, as to whether or not there is shown there what might be termed merchantable ore, considering the conditions, surroundings and the place where it is found?

(Testimony of James P. Harvey.)

A. No, sir, it is not merchantable ore; that is, the streak might be, but in order to work a six-inch streak of ore you would have to take a stope four to four and a half feet wide, and when we came back Mr. Ralston and I calculated the thing from there to the six hundred, and I think it showed 270 tons of ore in this six-inch streak, between that point and the 600. I think we figured that, allowing liberal construction of what that would average, fifteen per cent, and seven ounces in silver, and it shows 270 tons of that kind of ore between the eight and six. In order to get that 270 tons of ore you would have to take out four to four and a half feet wide, and we figured it four feet, which would make 1,800 tons total. The value of that 270 tons of ore, figured as I said before at four dollars for lead and sixty cents an ounce for silver would give a total of between \$4,050 and \$4,060; and the cost of extracting that 1,800 tons of ore at three dollars a ton would be \$5,400. It would not be profitable to work it.

Q. Mr. Culbertson testified that he had a conversation with you at Wallace in the year 1899. Do you remember the time he testified about that?

A. He said it was in the spring.

Q. In which you offered to sell him your interest in the Ella. State if that is true?

A. No, sir. I was not in the Coeur d'Alene country in 1899, and I never offered Mr. Culbertson nor anybody else my interest in the Ella for any consideration whatever until Mr. Clark spoke to me about it on this deal.

(Testimony of James P. Harvey.)

Q. State where you were during the year 1899, and what you were engaged at?

A. I was in the Republic camp, manager or superintendent of the Republic and several other mines there until July 1st. I was in Spokane I think twice from the first of January to the first of July, but not in the Coeur d'Alenes however, but was on business connected with the Republic and the various properties I was running there. On the first day of July I left here and went east and did not return from the east until the 20th day of August. On the 20th day of August I left here and went down to Leavenworth, this State, to look at some mines for Mr. Patrick Clark and returned on the 26th of August. On my return from that trip I went to Mr. Clark's office, and he told me that Mr. Culbertson had been in his office and told him—

Mr. HEYBURN.—I object to that as being hearsay and incompetent testimony.

Q. Go ahead.

A. —and told him that they had drifted in on the 1,200 on the Ella and it did not amount to anything, and that he was short Jim Clark's twentieth in the agreement that we had made, and he looked to him to have it given to him. He said he was selling out for \$500.

Q. (Cross.) That is what Clark said?

A. Clark said that Mr. Culbertson had told him.

Mr. HEYBURN.—I object to this as incompetent and hearsay testimony.

(Testimony of James P. Harvey.)

A. (Continuing.) On the first of September I went to Republic.

Q. Were you present when the samples which Mr. Ralston has put in evidence here in connection with his testimony were taken? A. Yes, sir.

Q. State whether they were representative samples of the ore bodies which you found there?

A. They were taken clean across all the ore in that seam.

Cross-Examination.

(By Mr. HEYBURN.)

Q. Mr. Harvey, you spoke of examining the west face of the O'Neil stope. You say there was about how much ore there? About a foot of galena ore exposed there?

A. I don't remember. From six inches, or something like that. I did not make any specific notes of the O'Neil, because I did not consider they were in Ella ground or the ground in dispute.

Q. You saw this map Mr. Ralston introduced yesterday? A. Yes, sir.

Q. Does that face of the O'Neill stope appear to be in the ground in dispute?

A. It does up here, but not down where the stope starts.

Q. What about the portion that is shown to be in Ella ground marked Plaintiff's Exhibit No. 43?

(Testimony of James P. Harvey.)

Mr. STOLL.—That is the portion that has been broken off fresh since.

Q. I asked you what appeared to be there in the way of ore?

(Objected to as improper cross-examination.)

A. Oh, it continued up about the same as the Clark stopes, five, six, four, and in some places widened out to ten inches and so on.

Q. Of pretty good ore? A. Yes.

Q. The same kind of ore that you milled from there when you were working the Clark stopes? A. Yes.

Q. You had charge of the work in the Clark stopes and the O'Neil stopes as manager, did you not?

A. As superintendent, yes.

Q. You stoped whatever ore was taken out of there yourself? A. The men did under my direction.

Q. Your judgment controlled as to whether it would pay to work or whether they should stope it or not, did it not? A. No, sir, facts.

Q. What? A. Well, facts and judgment.

Q. You determined the facts? A. Yes.

Q. That is, you did not have to get permission of anybody to say whether you would work that ore or not?

A. No, sir.

Q. You were the boss of that work? A. Yes.

Q. You say that the ore that you saw there the other day, last Friday, averaged about the same as the ore that you worked from those stopes? A. Yes, sir.

(Testimony of James P. Harvey.)

Mr. STOLL.—For my own advisement, do you mean as to size or quality?

Mr. HEYBURN.—Wait until I am through cross-examining him, except as to explanatory questions. I will turn him over to you in a minute.

The WITNESS.—As I have stated in my former testimony, it did not pay to work that ground, and that was the reason we quit.

Q. Were you present when the deed of James Clark and wife was made to Culbertson at the time you spoke of being in Patrick Clark's office? A. No.

Q. What year did you mean to be understood that you were not in the Coeur d'Alenes in August?

A. 1899.

(Witness excused.)

Mr. STOLL.—We will rest.

Complainants rest.

SURREBUTTAL.

W. CLAYTON MILLER, recalled on part of defendants, testified as follows:

Direct Examination.

(By Mr. HEYBURN.)

Mr. STOLL.—On what theory are you going to recall any more witnesses?

Mr. HEYBURN.—I am going to rebut the testimony your witnesses have just been giving.

(Testimony of W. C. 1903 Miller.)

Mr. STOLL.—We object to their calling any further witnesses, the case having closed upon our rebuttal.

Mr. HEYBURN.—This is surrebuttal.

Q. Mr. Miller, you heard Mr. Ralston just testify as to finding ore on three corners at the intermediate drift, and his suggestion that there had been a change there from the time he first saw the property until the time he recently saw it. State whether or not any work has been done that has removed anything, or changed those corners, with the exception of the pieces of ore that were brought into court here, since it was made?

Mr. STOLL.—That is objected to as improper surrebuttal; it was a part of our main case, and was never touched upon by the defendants in their case.

A. Mr. Ralston, I believe, saw it first about May when he was there unofficially. At that time I was in charge of the property. Since that time up to the present time, there has been no mining of any description done at this point, at the intersection of the 1,200 cross cut with the intermediate drift, or any of its corners, either above or below this intersecting point. There has been a little picking by witnesses examining it; but the only pieces of rock broken down to my knowledge or to my recollection, or any change noted by me during the many times I have been there, has been some large pieces broken down in my presence about ten days ago, including the piece brought into court from the southwest corner of the intersection. And further, I have

(Testimony of W. Clayton Miller.)

never seen on any of the corners any solid galena ore or any ore at all except on the southwest corner, where there is a slightly mineralized horse between the two small ore seams.

Q. A slightly mineralized horse?

A. A slightly mineralized horse, between the two small ore seams found, one in the intermediate drift on the foot wall side thereof, in the bottom, about six inches wide, of good ore; and another about eight inches in width, twenty-two to twenty-three feet south of this seam found in the south drift to the east, and being a split, around and in between which this horse is.

Q. Mr. Miller, you heard Mr. Ralston testify a few minutes ago that you refused to allow him and some others to enter this ground for the purpose of inspection, saying that he called you up on the telephone and you told him you were advised that he could not enter. Will you state, please, what the facts are in regard to that matter?

Mr. STOLL.—That is objected to as not proper rebuttal; it was introduced in chief by complainants, and never touched upon by the defense, and only drawn from our witness by cross-examination in rebuttal.

A. The first time that the party, as they call it, came up there, at the time Mr. MacDonald accompanied them—

Mr. STOLL.—We object to this as not proper rebuttal, and no denial of anything, but an attempt to go into the defense in an affirmative way.

(Testimony of W. Clayton Miller.)

Q. I don't want you to go into anything except the time he referred to.

A. I am explaining about the telephone conversation. They entered the mine and any portions thereof within the ground in controversy they desired, and stayed as long as they chose. On coming out there was a conversation to the effect that Mr. Ralston would desire to come back at some future time, some one future visit, to finish up his then unfinished examination and measurements, of whatever else he chose to do. When I say he himself, I mean of course his party who were there at the time. At the time of the second visit, at the time Mr. Fassett arrived on the scene, inasmuch as they were not included in the list first given me of the number of witnesses and engineers, etc., I told him anybody included in the original list of experts or witnesses or assistants were at liberty to go underground, which they did, of those who were present, excepting Mr. Fassett, who on advice—

Mr. STOLL.—Whose advice?

Mr. HEYBURN.—My advice.

A. Mr. Heyburn's advice; and then supposing that the engineering portion of the examination was over—

Mr. STOLL.—We object to what he supposes.

A. Supposing from the talk—

Mr. STOLL.—We object to the witness supposing from anything, the testimony should be of facts, and not suppositions.

(Testimony of W. Clayton Miller.)

Q. Go, on, Mr. Miller.

A. And on some later occasion, I have forgotten the date, when Mr. Ralston was down at the Bunkerhill from Wardner, he called me up about going underground. And before giving him an answer—I think that was in Mr. Heyburn's office in Wallace, when I was called up—and I told him that that portion of the examination was closed, but that Mr. Harvey, the company representative, could go, of course, underground at his pleasure, upon proper notice. But that was the terms of the order as I understood it.

Q. They have gone underground since freely, have they not?

A. They have never asked to go underground but once since, and that was the other day when they met me in Wallace, and asked me to go underground. I asked them where they wanted to go, and they named certain places. I wrote out an order and gave it to Mr. Harvey, in Mr. Ralston's presence to take up to the foreman, and I understand they went to those places, and they were not limited to time or anything else.

Cross-Examination.

(By Mr. STOLL.)

Q. What places in the mine did you tell them they could go last Friday?

A. I asked Mr. Harvey where he wanted to go. He said he wanted to go into the eight from the eleven, and wanted to go on the seventeen, inasmuch as some testi-

(Testimony of Charles S. Eltinge.)

suppose they were canceled in the office, but I would not swear to it.

Q. At the time they bear date?

A. I presume so.

Q. In your office? A. I presume they were.

Q. That is your signature witnessing the signature to the deed, is it?

A. That is my signature; yes.

Q. You did not write any of the balance or body of that deed, did you, except the name "Charlotte" and your signature. It is Mr. Culbertson's handwriting, is it not? A. It looks like it, yes.

Q. You wrote the word "Charlotte," the first name of Mr. Clark's wife, near the top of the deed in the second line?

A. That looks like my handwriting.

Cross-Examination.

(By Mr. STOLL.)

Q. Where is James Clark, the only person who could possibly explain the circumstances of this deed?

A. He is dead, I think.

Q. When did he die?

A. Last summer, some time, in July or August.

(Witness excused.)

F. R. CULBERTSON, recalled on part of defendants, testified as follows:

(Testimony of F. R. Culbertson.)

Direct Examination.

(By Mr. HEYBURN.)

Q. Mr. Culbertson, examine this document, a deed from James Clark and wife, to yourself, and state who wrote it.

Mr. STOLL.—That is objected to as improper rebuttal. This witness was on before to the same point on the defense, and this is not proper surrebuttal.

A. At the time I wrote my letter of August 25th to Patrick Clark, I stated in that letter—

Mr. STOLL.—We object to the answer as not responsive to the question.

A. (Continuing.)—that I was short Jim's deed, Jim Clark's deed; that if it had been delivered to me it had been either lost or destroyed. I said in that letter that I had made off a deed for Jim to sign—

Mr. STOLL.—We object to this speech, as being in response to no question propounded to the witness, and improper rebuttal.

A. (Continuing.) This is a matter of veracity—considerable veracity between Mr. Clark and myself. I propose to prove—

Mr. STOLL.—We object to these statements.

A. (Continuing.)—that I have got the documentary evidence here to prove that I am right and that Mr. Clark is wrong.

Mr. STOLL.—I object to the argument made by the

(Testimony of F. R. Culbertson.)

witness in attempting to establish his veracity. His statements are self-serving declarations.

A. (Continuing.) If I had got the deeds from Mr. Clark on the 22d or the 23d, as he stated, I naturally at that time would have sent that deed, which he says he handed to me in his office, down with the other deeds of Patrick Clark, Mr. Kingsbury and James Harvey. Three deeds were sent down by me on the 25th of August from Burke to the recorder to be recorded.

Mr. STOLL.—I object to this as being an argument of the witness, who is not of counsel in the case, and so far as we are advised he is not admitted to the bar, and we move to strike it out.

A. (Continuing.) As I stated before, Mr. Clark made some statements here that he cannot bear out on the evidence.

Mr. STOLL.—I move to strike that out as not responsive to any question. And I object to this witness being turned in here to travel over all sorts of territory with a rambling speech.

A. (Continuing.) It is self-evident to anybody that if I had had Jim Clark's deed on the 22d or the 23d, I would have sent it down on the 25th at the same time I sent these other three deeds down.

Mr. STOLL.—I move to strike that all out.

A. (Continuing.) These other three deeds show that they were recorded on the 23d day of August at Wallace, Idaho.

(Testimony of F. R. Culbertson.)

Mr. STOLL.—That is objected to as improper rebuttal, and we move to strike it out.

A. (Continuing.) If you will refer to the letter I wrote on the 25th of August to Mr. Clark, you will see that I asked Mr. Clark to supply Mrs. Jim Clark's first name, that I did not know it.

Mr. STOLL.—I move to strike out this argument.

A. (Continuing.) This deed shows that Mr. Eltinge, or somebody in Mr. Patrick Clark's office, received my letter with this deed in it at the time they supplied Mrs. Charlotte Clark's first name, as requested. They also added into the body of this deed this phrase: "This deed is executed and delivered in lieu of a former deed between the same parties, and for the same interest in said claims, which said deed has been lost or destroyed."

Mr. STOLL.—We move to strike that all out.

Q. Who wrote the body of that deed, Mr. Culbertson?

A. I did, and so stated in my letter to Mr. Clark on August 25th.

Mr. STOLL.—We move to strike that out. The letter is the best evidence.

Mr. CULBERTSON.—Is that the deed referred to in Mr. Eltinge's letter to you already in evidence?

A. That is the deed. That is the deed that I received in Mr. Eltinge's letter dated September 7th, and which was placed on record by me on September 9th, at Wallace, Idaho.

(Testimony of F. R. Culbertson.)

Q. That is the deed, is it? A. Yes, sir.

Mr. HEYBURN.—We offer the deed in evidence with its indorsements and everything on it.

Mr. STOLL.—We object to it as improper surrebuttal and improper for any purpose at any stage of the proceedings.

(Said deed is marked Defendants' Exhibit No. 19, and said original deed is hereto attached as such exhibit, and not copied into defendants' evidence, because a copy of it is already set out in the complainants' testimony.)

Mr. HEYBURN.—You offered certified copies, gentlemen, of the three deeds, one from James P. Harvey, one from Patrick Clark and wife, and one from Benjamin C. Kingsbury, to F. R. Culbertson, each for an undivided one-twentieth interest in the Ella and Missing Link claims. We now offer the original deeds in evidence, with the indorsements of record and all indorsements thereon.

Mr. WOODS.—We object to them as not proper surrebuttal, and as tending to encumber the record.

(Said original deeds last offered are hereto attached as Defendants' Exhibits Nos. 20, 21 and 22, and are not copied into defendants' evidence, because a copy of each of said exhibits is already set out in the complainants' testimony.)

Q. Now, Mr. Culbertson, you heard Patrick Clark yesterday state that you were mistaken in stating that you had a conversation with him in Spokane, in regard

(Testimony of F. R. Culbertson.)

to the sale of the Tiger-Poorman, as to the time. Will you state what you have to say from your recollection in regard to that matter?

Mr. STOLL.—That question is objected to as improper rebuttal.

A. I can state positively that the conversation occurred as I stated. That as to the time, whether it occurred in June or July of that year, I am not certain. It may have been July instead of June; it is two years back, and it is a pretty hard matter to fix the exact date; but as to the conversation taking place, I am absolutely positive that the conversation took place.

Q. As you have stated it?

A. As I have stated it.

Mr. STOLL.—We object to that and move to strike it out as being a mere reiteration of former testimony.

(Witness excused.)

Mr. STOLL.—I now move to strike out all the evidence on so-called surrebuttal as improperly admitted and for the reasons stated during the progress of the examination.

Mr. HEYBURN.—Do you consent, gentlemen, to the Court appointing the engineer and assayer referred to in the notice I served on you this morning?

Mr. STOLL.—Oh, no.

Defendants rest.

Complainants rest.

Certificate of Examiner.

State of Idaho, }
County of Latah. } ss.

I, Warren Truitt, examiner for the United States Circuit Court, for the District of Idaho, Northern Division, do hereby certify that the foregoing testimony of the respective witnesses therein named, on behalf of the complainants, and the defendants, was taken before me, at the City of Spokane, State of Washington, at the dates named in connection with their testimony, by stipulation of the parties in said action; that before these witnesses testified they were each duly sworn by me to tell the truth, the whole truth, and nothing but the truth, and that then the foregoing testimony of each witness as therein named was taken and written down in my presence by E. J. Lake and C. H. Sholes, the stenographers agreed upon by the said parties to report the same; that during the taking of said testimony the complainants appeared by their attorneys, Messrs. Stoll & MacDonald, M. J. Gordon, and W. W. Woods, and the defendants appeared by Messrs. Heyburn & Heyburn, their attorneys. And it was stipulated before me by said attorneys, for the respective parties, as above named, that the testimony of all witnesses therein named, as noted and written out by the said stenographers should be taken and accepted as the testimony of said witnesses, and reported to the Court by me as such without being signed by the witnesses, subject to such objections as appear thereto.

And I further certify that the several exhibits which accompany said testimony were offered in evidence by the respective parties, as noted therein.

Dated this 3d day of February, 1902.

WARREN TRUITT,
Examiner.

At a stated term of the Circuit Court of the United States, for the District of Idaho, held at Boise, Idaho, on the 8th day of February, A. D. 1902.
Present: Honorable JAMES H. BEATTY, Judge.

PATRICK CLARK et al.

vs.

BUFFALO HUMP MINING COM-
PANY et al.

} No. 247.
Northern Division

Order of Circuit Court Setting Cause for Hearing at Boise.

On this day, this cause came on to be heard upon the defendant's motion for the appointment of an engineer and assayer to examine and determine the existence and character of ore bodies on the 800 foot level and 1,200 foot level of the Ella and Missing Link lode claims. W. B. Heyburn, Esq., appearing as counsel for defendant and the motion, and W. T. Stoll and W. W. Woods, Esqs., for the plaintiffs and against said motion, and after argument and upon consideration, the Court ordered that said motion be denied. Thereupon, by consent of counsel for the respective parties, in open court, it is ordered that plaintiffs have twenty days from this date to prepare and serve their brief herein upon the law and facts

upon defendants; that defendants have twenty days after the expiration of the aforesaid twenty days to prepare and serve its brief upon plaintiffs and that said cause be set for trial before this Court at Boise, Idaho, on March 31, 1902, at 10 o'clock A. M.

UNITED STATES OF AMERICA.

District of Idaho—ss.

I, A. L. Richardson, clerk of the United States Circuit Court for the District of Idaho, do hereby certify that the foregoing copy of journal entry in cause No. 247, Patrick Clark et al. vs. Buffalo Hump Mining Co. et al., has been by me compared with the original, and that it is a correct transcript therefrom, and of the whole of such original as the same appears of record at my office and in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, in said District, this 26th day of July, 1902.

[Seal]

A. L. RICHARDSON,
Clerk.

[Endorsed]: No. 870. United States Circuit Court of Appeals for the Ninth Circuit. Patrick Clark et al. vs. Buffalo Hump Mining Co. et al. Certified Copy Order of Circuit Court Setting Cause for Hearing at Boise. Filed July 30, 1902. Frank D. Monckton, Clerk. By Meredith Sawyer, Deputy Clerk.

*In the Circuit Court of the United States for the District of
Idaho, Northern Division.*

PATRICK CLARK, BENJAMIN C.
KINGSBURY, JAMES P. HARVEY
and A. G. KERNS, Administrator of
the Estate of James Clark, Deceased,
Complainants,

vs.

No. 247.

BUFFALO HUMP MINING COM
PANY (a Corporation), EMPIRE
STATE-IDAHO MINING & DEVEL
OPING COMPANY (a Corporation),
Defendants.

Notice of Petition for Appeal.

To the Defendants Above Named, and W. B. Heyburn
and E. M. Heyburn:

Take notice, that complainants have waived the thirty days allowed them by the Court to take further steps before a decree was entered herein, now giving you notice that on Thursday, July 3d, at 10 o'clock A. M., at the opening of court at Boise, Idaho, complainants will submit to the Court for signature and entry, a draft of a decree, of which the annexed Exhibit "A" is a true copy, same being in conformity with the opinion of the Court filed herein, or such other decree as the Court may deem appropriate in the premises, and will also, at the same time and place, present to the Court for allowance, their petition for appeal, and ask the Court to enter an

order allowing an appeal to the Circuit Court of Appeals for the Ninth Judicial Circuit, and fixing the amount of complainants' bond on appeal, to operate as a super-seedeas and cost bond, a copy of which petition, to which is attached complainants' assignment of errors, and a copy of the proposed order allowing such appeal, is hereby attached and made a part hereof.

Dated June 27th, 1902.

STOLL & MacDONALD,
M. J. GORDON,
W. W. WOODS,
Solicitors for Complainants.

[Endorsed]: No. 247. United States Circuit Court, Northern Division, District of Idaho. Patrick Clark et al. vs. Buffalo Hamp Mining Company et al. Notice. Filed July 2d, 1902. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, for the District of
Idaho, Northern Division.*

PATRICK CLARK, BENJAMIN C.
KINGSBURY, JAMES P. HARVEY
and A. G. KERNS, Administrator of
the Estate of James Clark, Deceased,
Complainants,

vs.

No. 247.

BUFFALO HUMP MINING COM-
PANY (a Corporation), and EMPIRE
STATE-IDAHO MINING & DEVEL-
OPING COMPANY (a Corporation),
Defendants.

Assignment of Errors.

I.

The Circuit Court erred in its decree, directing the dismissal of complainants' bill; because—

1st. The evidence showed that the defendant, the Buffalo Hump Mining Company, procured the complainants to transfer to it, the property in controversy, by false and fraudulent representations made to the complainants, by the officers of the defendant company, because,

2d. The evidence showed that the defendants secretly and clandestinely explored the premises in controversy, through the workings owned by and under the exclusive control of the defendants, without the knowledge or permission of the complainants, and that in do-

ing so, they committed trespasses, and at the time of making the purchase of the premises in controversy, suppressed from the complainants the ore discoveries within the premises in controversy, for the purpose of cheating and defrauding the complainants, the complainants not having equal means of knowledge thereof; because,

3d. The evidence showed that the consideration paid to the complainants for the purchase of the premises in controversy was so grossly inadequate as to make the sale fraudulent; because,

4th. The evidence showed that if the defendants had not fraudulently concealed and suppressed from the complainants the condition of the premises in controversy at the time of the sale, a matter which was exclusively within the knowledge of the defendants, complainants would not have assented to the sale.

II.

The Court erred, because said decree is contrary to the evidence.

III.

The Court erred, because said decree is contrary to law.

IV.

The Court erred, because the decree should have been in favor of the complainants, according to the prayer of the bill of complaint.

V.

The Court erred, in holding that complainants made

no sufficient effort, prior to the sale, to ascertain the value of the premises.

VI.

The Court erred, in holding that complainants have not proven the fraud they charge, by that clear and decided evidence which the law demands.

VII.

The Court erred, in holding that complainants in delaying for over eighteen months to commence their action, have not shown the best of faith, and that it was unreasonable, that they should have been so long in making their discoveries; because,

1st. The evidence showed that complainants filed their bill of complaint within a reasonable time, after becoming informed of the fraud perpetrated upon them, complained of in said bill. No intervening right having accrued.

VIII.

The Court erred, in holding that a higher degree of caution is required, and more investigation demanded by a party selling a mineral claim, than in selling any other character of property, before a charge of fraud can be established with reference to the same.

IX.

The decree should have been for the complainants, because the Court has found:

1st. That the property in question was, at the time of sale, of greater value than complainants received.

2d. That the price received would not have been ac-

cepted, had they known, at the date of the sale, the conditions then existing in the drill holes and crosscut, upon the property in controversy.

3d. That Sweeny knew of the ore discoveries in the drill holes, and must have known something of the conditions in the crosscut.

4th. That Sweeny did not communicate such knowledge to the complainants, or either of them.

STOLL & MacDONALD.

M. J. GORDON, and

W. W. WOODS,

Solicitors for Complainants.

[Endorsed]: No. 247. In the Circuit Court of the United States, District of Idaho, Northern Division. Clark et al., Plaintiffs, vs. Buffalo Hump Mining Company, Defendant. Assignment of Errors. Filed July 2d, 1902. A. L. Richardson, Clerk.

*In the Circuit Court of the United States for the District of
Idaho, Northern Division.*

PATRICK CLARK, BENJAMIN C.
KINGSBURY, JAMES P. HARVEY,
and A. G. KERNS, Administrator of
the Estate of James Clark, Deceased,
Complainants,

vs.

BUFFALO HUMP MINING COM-
PANY (a Corporation), and EMPIRE
STATE-IDAHO MINING & DEVEL-
OPING COMPANY (a Corporation),
Defendants.

Petition for Appeal.

The above-named complainants, conceiving themselves aggrieved by the decree made and entered in the above entitled cause on the 3d day of July, 1902, wherein and whereby it was ordered, adjudged and decreed, among other things, "that the prayer of the complainants be denied, that their bill of complaint be dismissed, and that they take nothing by this suit. That the defendants be hence dismissed with their reasonable costs. Defendants' costs taxed at \$———. The said costs amounting to \$———," do hereby appeal from the said decree, and every part thereof, to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors, filed herein, and they pray that this appeal may be allowed, and

that a transcript of the record, testimony, exhibits, stipulations, depositions, and all proceedings herein, upon which the said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that a bond on appeal may be fixed by the Court, the same to act as a supersedeas bond, and also as a bond for costs and damages on appeal.

STOLL & MacDONALD,
M. J. GORDON,
W. W. WOODS,
Solicitors for Complainants.

Order Allowing Appeal.

Order: That an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree heretofore filed and entered herein, be and the same hereby is allowed; and that a certified transcript of the record, testimony, exhibits, stipulations, depositions, and all proceedings herein be forthwith transmitted to the said Circuit Court of Appeals. It is further ordered that the bond on appeal be fixed at the sum of \$5,000, the same to act as a supersedeas bond, and also as a bond for costs and damages on appeal. The same to be approved by the clerk of this Court.

Dated at Boise, Idaho, this 3d day of July, 1902.

JAS. H. BEATTY,

Judge.

[Endorsed]: No. 247. In the Circuit Court of the United States, District of Idaho, Northern Division. Patrick Clark et al., Plaintiffs, vs. Buffalo Hump Mining Company et al., Defendants. Petition. Filed July 3d, 1902. A. L. Richardson, Clerk. Stoll & Macdonald, The Rookery, Spokane, Washington, Attorneys for Complainants.

In the Circuit Court of the United States for the District of Idaho, Northern Division.

PATRICK CLARK, BENJAMIN C. KINGSBURY, JAMES P. HARVEY, and A. G. KERNS, Administrator of the Estate of James Clark, Deceased, Complainants,

vs.

BUFFALO HUMP MINING COMPANY (a Corporation), and EMPIRE STATE-IDAHO MINING & DEVELOPING COMPANY (a Corporation), Defendants.

Bond on Appeal.

Know all men by these presents: That we, Patrick Clark, Benjamin C. Kingsbury and James P. Harvey, of the city and county of Spokane, State of Washington, and A. G. Kerns, as administrator of the estate of James Clark, deceased, of Wallace, Idaho, as principals, and National Surety Company, a corporation created by the laws of the State of New York, with its principal place

of business at 346 Broadway, in the city of New York, as surety, and each of us, are held and firmly bound by these presents, unto the defendants above named, their successors and assigns, in the just and full sum of \$5,000, lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 5th day of July, A. D. 1902.

Whereas, on the 3d day of July, 1902, a decree and judgment was entered in the above-entitled suit in the court aforesaid, in favor of the defendants, and the said complainants, Patrick Clark, Benjamin C. Kingsbury, James P. Harvey, and A. G. Kerns, administrator of the estate of James Clark, deceased, are prosecuting an appeal therefrom to the United States Circuit Court of Appeals, for the Ninth Judicial Circuit.

Now, therefore, the condition of this obligation is such, that if the above-named Patrick Clark, Benjamin C. Kingsbury, James P. Harvey and A. G. Kerns, administrator of the estate of James Clark, deceased, appellants, shall prosecute their appeal to effect, and if they fail to make their plea good, shall answer all damages and costs in this suit, then this obligation shall be void; otherwise to be and remain in full force and effect.

PATRICK CLARK.

BENJAMIN C. KINGSBURY.

JAMES P. HARVEY.

A. G. KERNS,

Administrator of the Estate of James Clark, Deceased.

NATIONAL SURETY COMPANY,

By CHAS. S. ELTINGE,

[Seal]

Resident Vice-President.

Attest: E. C. MacDONALD,

Resident Assistant Secretary.

The foregoing bond is hereby approved, this 5th day of July, 1902.

JAS. H. BEATTY,

Judge.

AFFIDAVIT, ACKNOWLEDGMENT AND JUSTIFICATION BY GUARANTEE OR SURETY COMPANY.

State of Washington, }
County of Spokane. } ss.

On this 5th day of July, one thousand nine hundred and two, before me personally came E. C. MacDonald, known to me to be the resident assistant secretary of the National Surety Company, the corporation described in and which executed the within and foregoing bond of Patrick Clark et al., as a surety thereon, and who, being by me duly sworn, did depose and say that he resides in the city of Spokane, State of Washington; that he is the resident assistant secretary of said company, and knows the corporate seal thereof; that the said national surety company is duly and legally incorporated, under the laws of the State of New York; that said company has complied with the provisions of the act of Congress of August 13th, 1894; that the seal affixed to the within

bond of Patrick Clark et al. is the corporate seal of said company, and was thereto affixed by order and authority of the Board of Directors of said company, and that he signed his name thereto by like order and authority as resident assistant secretary of said company, and that he is acquainted with Chas. S. Eltinge, and knows him to be the resident vice-president of said company; and that the signature of said Chas. S. Eltinge, subscribed to said bond is the genuine handwriting of said Chas. S. Eltinge, and was thereto subscribed by order and authority of said Board of Directors, and in the presence of said deponent; and that the assets of said company, unencumbered and liable to execution, exceed its claims, debts and liabilities of every nature whatsoever, by more than the sum of five hundred thousand dollars.

F. L. Moore is our agent to acknowledge service in the Judicial District, wherein this bond is given, and resides at Moscow.

E. C. MacDONALD.
(Deponent's Signature.)

Sworn to, acknowledged before me, and subscribed in my presence, this 5th day of July, 1902.

[Seal]

W. S. GILBERT,

(Officer's Signature, Description and Seal.)

Notary Public, in and for the State of Washington, Residing at Spokane.

[Endorsed]: No. 247. In the Circuit Court of the United States, District of Idaho, Northern Division. Patrick Clark et al., Plaintiffs, vs. Buffalo Hump Mining

Co. et al., Defendants. Bond on Appeal. Filed July 5th, 1902. A. L. Richardson, Clerk.

In the United States Circuit Court for the District of Idaho, Northern Division.

PATRICK CLARK, BENJAMIN C. KINGSBURY, JAMES P. HARVEY, and A. G. KERNS, Administrator of the Estate of James Clark, Deceased,
Complainants,

vs.

BUFFALO HUMP MINING COMPANY (a Corporation), and EMPIRE STATE-IDAHO MINING & DEVELOPING COMPANY (a Corporation),

Defendants.

Order to Transmit Original Exhibits to United States Circuit Court of Appeals.

It is hereby ordered that all original exhibits offered in evidence by either plaintiff or defendant on the trial of the above-entitled cause, be allowed to be withdrawn from the files for the purpose of being transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, as a part of the record on appeal to the said United States Circuit Court of Appeals in this cause and that the same be returned to this court upon the final termination of said appeal in the said United States Circuit Court of Appeals.

JAS. H. BEATTY,
Judge.

[Endorsed]: No. 247. United States Circuit Court, Northern Division, District of Idaho. Patrick Clark et al. vs. Buffalo Hump Mining Company et al. Order to Transmit Original Exhibits to United States Circuit Court of Appeals. Filed July 7th, 1902. A. L. Richardson, Clerk.

In the Circuit Court of the United States for the District of Idaho, Northern Division.

PATRICK CLARK, BENJAMIN C. KINGSBURY, JAMES P. HARVEY, and A. G. KERNS, Administrator of the Estate of James Clark, Deceased,
Appellants,
against

BUFFALO HUMP MINING COMPANY (a Corporation), and EMPIRE STATE-IDAHO MINING & DEVELOPING COMPANY (a Corporation),
Respondents.

Citation.

United States of America—ss.

The President of the United States, to the Buffalo Hump Mining Company, a Corporation, The Empire State-Idaho Mining & Developing Company, a Corporation, and to Your Attorneys, Greeting:

Whereas Patrick Clark, Benjamin C. Kingsbury, James P. Harvey, and A. G. Kerns, administrator of the

estate of James Clark, deceased, have lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit, from a decree rendered in the Circuit Court of the United States for the District of Idaho, on the third day of July, 1902, in your favor, and have given the security required by law, you are, therefore, hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, to be holden at San Francisco, State of California, on the 3d day of August, 1902, to show cause, if any there be, why the said decree should not be corrected and speedy justice done to the parties in that behalf.

Given under my hand at Boise, in said district, this 5th day of July, A. D. 1902.

J. H. BEATTY,
Judge.

Attest:

[Seal]

A. L. RICHARDSON,
Clerk.

RETURN.

And thereupon it is ordered by the Court, that a transcript of the record and proceedings in the case aforesaid, together with all things thereunto relating, be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

Attest:

[Seal]

A. L. RICHARDSON,
Clerk.

Service of the foregoing citation by copy admitted this 8th day of July, A. D. 1902.

W. B. HEYBURN,
Solicitor for Defendants.

[Endorsed]: No. 247. In the Circuit Court of the United States, District of Idaho, Northern Division. Patrick Clark et al., Appellants, vs. Buffalo Hump Mining Company et al., Respondents. Citation. Filed July 12, 1902. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, in and for the
District of Idaho, Northern Division.*

PATRICK CLARK, BENJAMIN C.
KINGSBURY, JAMES P. HARVEY,
and A. G. KERNS, Administrator of
the Estate of James Clark, Deceased,
Appellants,

vs.

BUFFALO HUMP MINING COM-
PANY (a Corporation), and EMPIRE
STATE-IDAHO MINING & DEVEL-
OPING COMPANY (a Corporation),
Respondents.

Clerk's Certificate to Transcript.

I, A. L. Richardson, Clerk of the Circuit Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to —, inclusive, to be a full, true and correct copy of

the pleadings and proceedings in the above entitled cause (except the original exhibits and proceedings upon motion for injunction); and that the same together constitute the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the record herein amounts to the sum of \$678, and that the same has been paid by appellants.

Witness my hand and the seal of said Circuit Court, affixed at Boise, Idaho, this 22d day of July, A. D. 1902.

[Seal]

A. L. RICHARDSON,
Clerk.

Journal Entry.

At a stated term of the Circuit Court of the United States for the District of Idaho, held at Boise, Idaho, Saturday, September the 14th, A. D. 1901. Present: Honorable JAMES H. BEATTY, Judge.

PATRICK CLARK et al.,

Complainants,

vs.

THE BUFFALO HUMP MINING COM-
PANY et al.,

Defendants.

} No. 247.
Northern Division

Order Permitting Plaintiffs to Enter Premises.

The plaintiffs having withdrawn their application for an injunction and a receivership, by agreement of par-

ties expressed in open court, it is ordered—

That the plaintiffs and their engineers, with necessary assistants, be allowed to enter into the premises in controversy in this suit through the workings of the defendants to make an underground survey and examination of the premises in controversy in this suit, and that until this case has been finally tried and decided by this Court, the plaintiffs be allowed access to the premises in controversy through the workings of the defendant companies by a representative to be appointed by the plaintiffs, at all reasonable times; such representative to be either one of the plaintiffs or some person unobjectionable to the defendants.

UNITED STATES OF AMERICA.

District of Idaho—ss.

I, A. L. Richardson, Clerk of the United States Circuit Court for the District of Idaho, do hereby certify that the foregoing copy of journal entry in cause No. 247, Patrick Clark et al., vs. Buffalo Hump Mining Company et al., has been by me compared with the original, and that it is a correct transcript therefrom, and of the whole of such original, as the same appears of record at my office and in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court in said District, this 30th day of July, 1902.

[Seal]

A. L. RICHARDSON,
Clerk.

[Endorsed]: No. 870. United States Circuit Court of Appeals, Ninth Circuit. No. 247. In the Circuit Court

of the United States, District of Idaho. Patrick Clark et al., vs. Buffalo Hump Mining Company et al. Certified Copy. Order Permitting Plaintiffs to Enter Premises. Filed August 5, 1892. F. D. Monckton, Clerk, United States Circuit Court of Appeals, for the Ninth Circuit.

[Endorsed]: No. 870. In the United States Circuit Court of Appeals for the Ninth Circuit. Patrick Clark, Benjamin C. Kingsbury, James P. Harvey, and A. G. Kerns, Administrator of the Estate of James Clark, Deceased, vs. The Buffalo Hump Mining Company (a Corporation), and the Empire State-Idaho Mining and Developing Company (a Corporation), Appellees. Transcript of Record Upon Appeal from the United States Circuit Court for the District of Idaho, Northern Division.

Filed July 28, 1902.

F. D. MONCKTON,

Clerk.

By Meredith Sawyer,

Deputy Clerk.

